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Carnegie Endowment for International  
Peace, Division of International Law,  
Pamphlet No. 2. Report of Hon. John W.  
Foster, Sec. of State, Dec. 7, 1892.

Limitation of Armament on the Great Lakes.

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# Carnegie Endowment for International Peace

DIVISION OF INTERNATIONAL LAW

Pamphlet No. 7

## LIMITATION OF ARMAMENT ON THE GREAT LAKES

Report of Honorable John W. Foster, Secretary of State,  
to the President of the United States,  
December 7, 1892

FORWARDED BY THE ENDOWMENT  
WASHINGTON, D. C.  
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# **Carnegie Endowment for International Peace**

**DIVISION OF INTERNATIONAL LAW**

**Pamphlet No. 2**

## **LIMITATION OF ARMAMENT ON THE GREAT LAKES**

**Report of Honorable John W. Foster, Secretary of State,  
to the President of the United States,  
December 7, 1892**

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## Introduction

Dr. Johnson said of Oliver Goldsmith that he "never touches any subject, but he adorns it"; and it may be said with equal truth that Benjamin Franklin never discussed any subject, scientific or political, without illuminating it. In an interesting interview with Dr. Franklin, in 1783, the question of the limitation of armaments was broached by a Mr. Baynes, in whose journal the interview is recorded, and within the compass of a paragraph the great Doctor pointed out the way in which armaments might be limited, and the reasons which in his opinion made their limitation inevitable.<sup>1</sup> Two young Englishmen, John Baynes and Samuel Romilly, the latter, like Franklin, a benefactor of his kind, took advantage of the peace between the erstwhile colonies and the mother country, to visit Dr. Franklin, who was then our Minister at the Court of Versailles, and for whom the young men had conceived a great admiration. Romilly, doubtless to his great regret, was not present at the interview in question. The venerable diplomat and statesman evidently took a fancy to them, for Romilly says in his autobiography: "Doctor Franklin was indulgent enough to converse a good deal with us, whom he observed to be young men very desirous of improving by his conversation."<sup>2</sup>

"Insensibly," says Mr. Baynes, in his journal under date of October 2, 1783, "we began to converse on standing armies, and he seeming to express an opinion that this system might some time or other be abolished, I took the liberty to ask him in what manner he thought it could be abolished; that at present a compact among the Powers of Europe

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<sup>1</sup>Mr. Baynes' journal was printed originally as an appendix to the first volume of the *Life of Sir Samuel Romilly*, written by himself, edited by his sons, 2 vols., 3d ed., 1841; reprinted in Bigelow's *Works of Benjamin Franklin*, 1888, Vol. VIII, pp. 410-25.

<sup>2</sup>*Life of Sir Samuel Romilly*, Vol. I, p. 50.

Sir Samuel Romilly was an excellent judge of men, and in the course of his long career he met the celebrities of his generation. His opinion of Franklin is, therefore, of more than passing interest, especially to Americans. It is, therefore, quoted:

"Of all the celebrated persons whom, in my life, I have chanced to see, Dr. Franklin, both from his appearance and his conversation, seemed to me the most remarkable. His venerable patriarchal appearance, the simplicity of his manner and language, and the novelty of his observations, at least the novelty of them at that time to me, impressed me with an opinion of him as of one of the most extraordinary men that ever existed."

seemed the only way, for one or two Powers singly and without the rest would never do it; and that even a compact did not seem likely to take place, because a standing army seemed necessary to support an absolute government, of which there were many in Europe. 'That is very true,' said he; 'I admit that if one Power singly were to reduce their standing army, it would be instantly overrun by other nations; but yet I think that there is one effect of a standing army which must in time be felt in such a manner as to bring about the total abolition of the system.' On my asking what the effect was to which he alluded, he said he thought they diminished not only the population, but even the breed and the size of the human species. 'For,' said he, 'the army in this and every other country is in fact the flower of the nation—all the most vigorous, stout, and well-made men in a kingdom are to be found in the army. These men in general never marry.'"<sup>1</sup>

It will be noted that in this brief paragraph Dr. Franklin went to the root of things. He had previously expressed, in a passage to be quoted later, a hope "that the world would grow wiser, and wars become less frequent." He felt, however, that the process would be very slow, and that nations would have to understand that the war system was calculated to destroy their virility. If they should find that the effect of wars was not merely to diminish the population, but even the breed and the size of the human species, he thought that the nations would through motives of self-preservation reduce their standing armies. This is in a nutshell the biological argument against war.<sup>2</sup> Modern instances might be cited to show the correctness of the good Doctor's views as to the inevitable consequences of war. It is, however, best to reject the present and to appeal solely to the past.

In speaking of the decline and fall of the Roman Empire, a recent German writer, Dr. Otto Seeck, Professor of History at the University of Rostock, states, after a careful and painstaking examination of all available statistics, that the fall of the Empire was due to the fact that out of every hundred thousand strong men, eighty thousand were slain in battle, and that out of every hundred thousand weaklings, ninety to ninety-five thousand were left to survive, and to use Franklin's

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<sup>1</sup>*Life of Sir Samuel Romilly*, Vol. I, Appendix, pp. 454-5; Bigelow's *Works of Benjamin Franklin*, Vol. VIII, p. 420.

<sup>2</sup>For an interesting development of this argument and its application to concrete cases, see David Starr Jordan's *Human Harvest*, 1907.

expression, to continue the human species.<sup>1</sup> His conclusion, therefore, is that the German conquered the Roman not because Rome was weakened by luxury and self-indulgence, which affected but a small percentage of the population, but because the barbarian was physically fit. Rome, depleted by war, was unequal to the contest.<sup>2</sup>

To the same effect is the earlier testimony of the late Sir John Seeley, who says that "whatever the remote and ultimate cause may have been, the immediate cause to which the fall of the Empire can be traced is a physical, not a moral, decay. In valor, discipline, and science, the Roman armies remained what they had always been, and the peasant emperors of Illyricum were worthy successors of Cincinnatus and Caius Marius. But the problem was how to replenish those armies. Men were wanting; the Empire perished for want of men."<sup>3</sup>

That is to say, these two distinguished historians, one a German, the other an Englishman, permeated with German thought and culture, concur with Dr. Franklin, in attributing the fall of the greatest empire, at least the greatest empire of the ancient world, to the fact that "the flower of the nation—all the most vigorous, stout, and well-made men" had perished in battle. The good seed had been destroyed and the bad seed brought forth, as was to be expected, imperfect fruits. Will history repeat itself? Unfortunately, it is fond of doing so.

In the first part of the passage which has been quoted, Dr. Franklin gave his approval to the suggestion that standing armies might be abolished; that a compact among the Powers of Europe seemed the only way, as no one Power would abolish its standing army, as "it would be instantly overrun by other nations." The Doctor also concurred in the statement that standing armies "seemed necessary" to support an absolute government, of which there were many in Europe. From the cautious manner in which he treated the subject, it appears that he had no present hope of a compact among the nations, although he believed and so stated that the consequences of war would force

<sup>1</sup>Otto Seeck's *Geschichte des Untergangs der antiken Welt*, 1894, 2d ed., 1897, Vol. I, p. 303.

<sup>2</sup>"Extermination of the best, which caused the downfall of the weaker nations, did but enable the stout German nation to raise new and enduring communities on the ruins of the ancient world." *Ibid.*, p. 308.

<sup>3</sup>Seeley's *Roman Imperialism and other Lectures and Essays*. 1871. American ed., p. 54.

them in the course of time to enter into a compact by means of which standing armies would be reduced. Here, again, as will be seen, the Doctor's views are supported by history.

In the course of the interview, Mr. Baynes mentioned what seemed to him to be "an omission in the Constitution of America, the want of any sufficient armed force." The good Doctor, as reported by Mr. Baynes, "seemed to think the objections of no great weight. 'For,' said he, 'America is not, like any European Power, surrounded by others, every one of which keeps an immense standing army; therefore, she is not liable to attacks from her neighbors—at least, if attacked she is on an equal footing with the aggressor, and if attacked by any distant Power she will always have time to form an army.'"<sup>1</sup> That is to say, Dr. Franklin thought that the situation of America, so unlike that of Europe, might prevent standing armies with us and that a compact with one Power, which was then impossible in Europe, might be feasible in America. In this he has not been deceived, and the Rush-Bagot agreement of 1817,<sup>2</sup> concluded between Great Britain and the United States, is a tribute to him, both as a prophet and as a statesman.

A further passage from Mr. Baynes' journal is enlightening as it shows not only Franklin's belief in human progress, but that his experience of affairs enabled him to set a time when nations might be expected to become reasonable. "In the course of this conversation," Mr. Baynes says, "I mentioned the shameful neglect of treaties which so prevailed at present; the great injustice of several of our own wars, and the triviality of the avowed cause of others. I likewise mentioned Dr. Price's plan for a general peace in Europe. He observed that nothing could be more disgraceful than the scandalous inattention to treaties, which appeared in almost every manifesto; and that he thought the world would grow wiser, and wars become less frequent. But he observed that the plans which he had seen for this purpose were in

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<sup>1</sup>*Life of Sir Samuel Romilly*, Vol. I, Appendix, p. 454; Bigelow's *Works of Benjamin Franklin*, Vol. VIII, pp. 419-20.

<sup>2</sup>This agreement, commonly called the Rush-Bagot compact, was effected by an exchange of notes dated respectively April 28 and 29, 1817, between Sir Charles Bagot, the British Minister to the United States, and Richard Rush, Acting Secretary of State. These notes and the President's proclamation of April 28, 1817, putting the agreement into effect, are printed as an Appendix to the Report, at pages 54, 56.

general impracticable in this respect, *viz.*, that they supposed a general agreement among the sovereigns of Europe to send delegates to a particular place. Now, though perhaps two or three of them might be willing to come into this measure, it is improbable and next to impossible that all, or even a majority of them, would do it. 'But,' said he, 'if they would have patience, I think they might accomplish it, agree upon an alliance against all aggressors, and agree to refer all disputes between each other to some third person, or set of men, or Power. Other nations, seeing the advantage of this, would gradually accede; and perhaps in one hundred and fifty or two hundred years, all Europe would be included.'"<sup>1</sup>

The time set by Dr. Franklin has not yet run, but if the signs of the day do not fail, agencies are at work which will make his prophecy seem less chimerical than it was exactly one hundred and thirty-one years ago. The enlightened Czar of all the Russias called the nations into conference in 1898, to discuss the limitation of armament. A Conference of twenty-six nations was held at The Hague, in 1899, to consider this question and the methods of peaceable settlement; a Conference of forty-four nations met at The Hague, in 1907, in which, however, the question was mentioned but not discussed, although the methods of peaceable adjustment were again considered, and there are many who believe that a third Conference is destined to meet at The Hague in the not distant future, in which these subjects will be examined in the light of a recent and a disastrous experience.

Great Britain and the United States, not the least respected countries in the society of nations, have entered into a compact, namely, the Rush-Bagot agreement of 1817;<sup>2</sup> a compact which has stood the test of time, and the storm and stress of war. It should be borne in mind that this agreement was the outcome of the so-called war of 1812, between the two countries, and that the observance of its provisions has kept peace along a boundary of well nigh four thousand miles.

The Great Lakes, lying between Canada and the United States, have been the theater of a number of naval conflicts, some of them of an important character, during the war between the United States and

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<sup>1</sup>*Life of Sir Samuel Romilly*, Vol. I, Appendix, pp. 452-5; Bigelow's *Works of Benjamin Franklin*, Vol. VIII, p. 418.

<sup>2</sup>See Appendix, p. 54.

Great Britain of 1812-14; and when peace was declared there existed on these lakes a considerable body of naval vessels of both nations.

The Government of the United States proposed that these vessels be dismantled and put out of warlike service, and that thereafter the naval armament of both nations be limited on each side to one vessel of 100 tons burden, armed with a single 18-pound cannon, on Lake Ontario and to two, similarly armed, on the upper lakes. This proposition was accepted by the British Government, and in 1817 an agreement was effected by an exchange of diplomatic notes which later assumed the force of a formal treaty.

This agreement has continued in force without modification up to the present time, but during the period of near a century of its existence extraordinary conditions in both the neighboring countries have made necessary some temporary changes in the terms of limitation. In 1836 to 1841 Canada was threatened with revolutionary disturbance, which led its authorities to equip vessels in excess of the limitation to suppress the rebellion; but when the danger was passed the vessels were put out of the service, and the Government of the United States, recognizing the exceptional conditions entered no serious objection to the action of the Canadian authorities.

During the Civil War in the United States from 1861-1865 certain persons from the Southern States sought to set on foot in and from Canadian territory hostile operations on the Great Lakes, and the Government of the United States armed a number of vessels to suppress these movements. About the close of the war the Secretary of State of the United States gave notice to Great Britain of the intention of the American Government to terminate, within the six months stipulated, the agreement for limitation of armament on the Great Lakes. But before the period fixed the Civil War came to an end, the notice of termination was recalled, and the agreement of 1817 continued in force.

It should be noted that the wars here referred to were domestic, not foreign wars.

Since the negotiation of the agreement almost one hundred years ago the situation on the Great Lakes has greatly changed. In 1817 they were almost entirely surrounded by a wilderness and very sparsely inhabited. To-day on their shores are great cities and a teeming and thriving population, and on their waters there moves an enormous com-

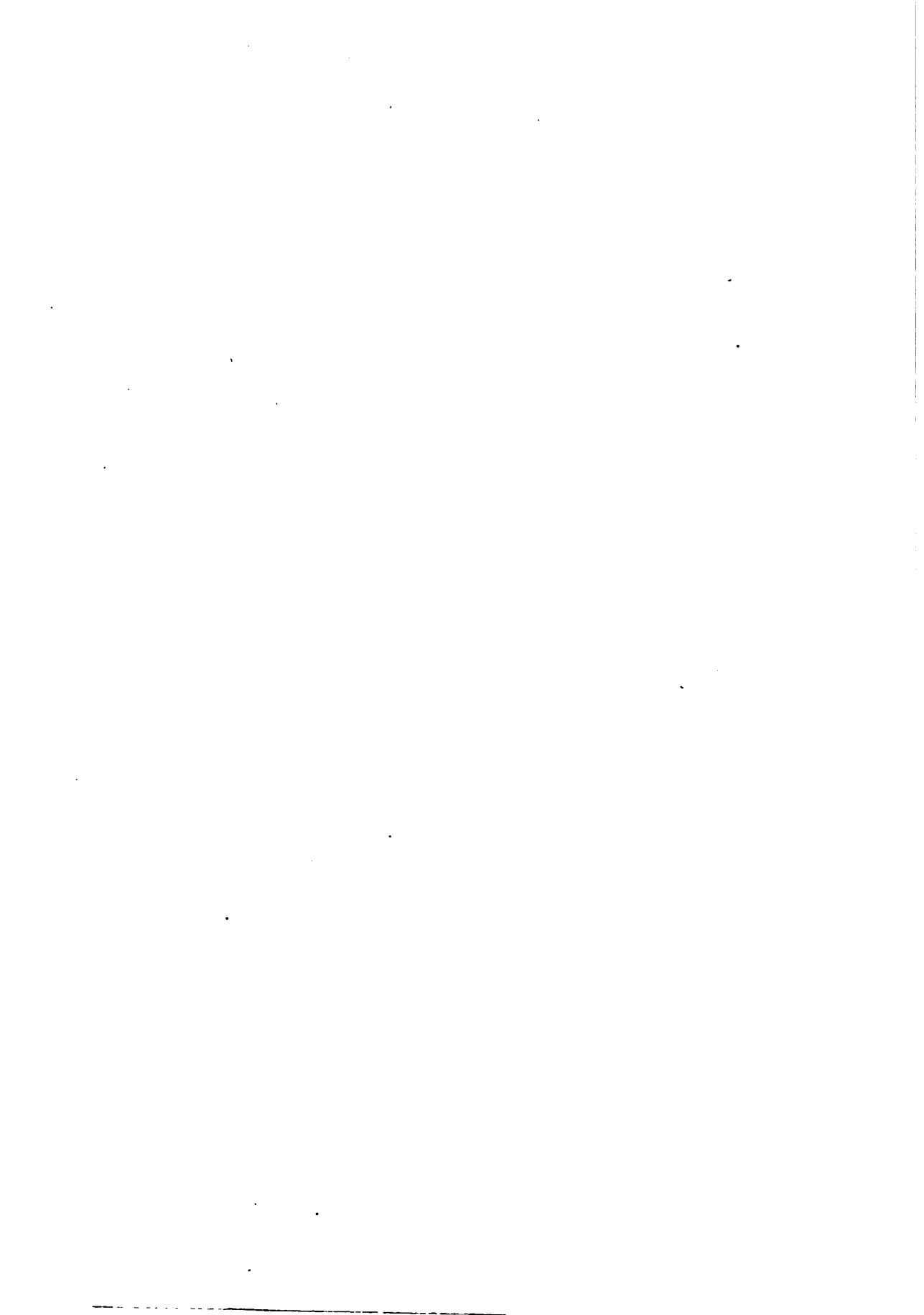
merce. This condition has made it necessary to increase the size and number of the vessels used to protect the revenue, but the two Governments have agreed that such enlargement shall not be regarded as an infringement of the limitation of naval armament, which continues to be carefully guarded.

The Rush-Bagot compact is not the project of a dreamer; its possibility was foreseen by a hard-headed and shrewd man of business, Benjamin Franklin; it was negotiated by men of affairs of two countries not ordinarily termed impractical; it keeps the peace without a gun and without a soldier between more than a hundred millions of people along an unfortified boundary little less than four thousand miles.

What two have done, others may do; and it is believed that the publication and wide circulation of the report on the Rush-Bagot treaty, prepared in 1892, by the Honorable John W. Foster, then Secretary of State, will be peculiarly timely when the best thought of mankind is turned toward a modification of European conditions at the conclusion of the present wars, which will relieve its peoples from the burdens and consequences of excessive armament.

JAMES BROWN SCOTT,  
*Director of the Division of International Law.*

WASHINGTON, D. C.,  
*October 2, 1914.*



## LIMITATION OF ARMAMENT ON THE GREAT LAKES

REPORT OF THE HONORABLE JOHN W. FOSTER, SECRETARY OF STATE,  
IN RESPONSE TO SENATE RESOLUTION OF APRIL 11, 1892, RELATIVE  
TO THE AGREEMENT BETWEEN THE UNITED STATES AND GREAT  
BRITAIN CONCERNING THE NAVAL FORCES TO BE MAINTAINED ON  
THE GREAT LAKES.<sup>1</sup>

To the PRESIDENT:

The Secretary of State, to whom was communicated a resolution adopted on the 11th of April, 1892, by the Senate of the United States, in the following words:

*Resolved*, That the Secretary of State be, and he is hereby, directed to inform the Senate whether the agreement entered into between the United States and Great Britain in the year eighteen hundred and seventeen, covering the question of the naval force to be maintained by the two Governments on the Great Lakes of the United States, is now held to be in force by the Department of State, and what, if any, action has been taken by our Government to revive or put in force the terms of said agreement, and if so, under what authority or action on the part of our Government such agreement has been held to be in force since the giving of the required formal notice by the President to Great Britain in December, eighteen hundred and sixty-four, of a desire on the part of the United States to annul said agreement at the expiration of the six months from the date of said formal notice, and the ratification of said notice by the act of Congress of February ninth, eighteen hundred and sixty-five,

has the honor to submit to the President a report in response to said resolution, in order that it may be laid before the Senate, should the President deem it not incompatible with public interests so to do.

A statement of the circumstances preceding and attending the negotiation of the agreement of April 28-29, 1817,<sup>2</sup> seems proper to the fuller understanding of the questions presented:

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<sup>1</sup>Transmitted to the Senate, Dec. 7, 1892, by President Harrison, and printed in Sen. Ex. Doc. No. 9, 52d Cong., 2d sess.

<sup>2</sup>See Appendix, p. 54.

## I

After the restoration of peace between the United States and Great Britain by the treaty of Ghent, in 1814, several dangerous sources of disagreement between the two countries were found to exist in the restless and even hostile spirit of the Indians on the frontier, in the unneighborly conduct of the British officers in Canada, in the impressment of seamen, in commercial intercourse, in the enjoyment of common rights of fishery on the Nova Scotian and Newfoundland coasts, and in the maintenance by Great Britain of an excessive armament on the Great Lakes. All of these matters were the occasion of frequent instructions by Mr. Monroe, then Secretary of State, to Mr. John Quincy Adams, minister to London, looking to their adjustment by conventional arrangements. The subjects being associated and discussed together, the references to the question of the armament on the lakes and its restriction in the common interest of the two countries are for the most part incidental to the general negotiation for the regulation of the rights of fishing, which had then assumed an overshadowing importance. The present report will aim to separate the discussion of the question of the naval armaments and exhibit it in connected sequence, so far as the records will permit.

The first reference to the matter appears to have been made during the summer of 1815, when Mr. Adams, under date of August 29, transmitted to the Department of State some British newspapers in which it was announced that His Majesty's cabinet had determined not only to maintain but to augment its armed naval force on the Great Lakes. Mr. Monroe thereupon proposed a mutual restriction of the naval force to be maintained on the lakes by both parties in an instruction addressed to Mr. Adams, dated November 16, 1815, as follows:

[Mr. Monroe to Mr. Adams, November 16, 1815.]

The information you give of orders having been issued by the British Government to increase its naval force on the lakes is confirmed by intelligence from that quarter of measures having been actually adopted for the purpose. It is evident, if each party augments its force there, with a view to obtain the ascendancy over the other, that vast expense will be incurred and the danger of collision augmented in like degree. The President is sincerely desirous to prevent an evil which it is presumed is equally to be deprecated by both Gov-

ernments. He therefore authorizes you to propose to the British Government such an arrangement respecting the naval force to be kept on the lakes by both Governments as will demonstrate their pacific policy and secure their peace. He is willing to confine it, on each side, to a certain moderate number of armed vessels, and the smaller the number the more agreeable to him; or to abstain altogether from an armed force beyond that used for revenue. You will bring this subject under the consideration of the British Government immediately after the receipt of this letter.

In a conference with Lord Castlereagh on January 25, 1816, Mr. Adams submitted the proposal and briefly mentioned having done so in a dispatch written to Mr. Monroe, January 31, 1816, in which he said:

[Mr. Adams to Mr. Monroe, January 31, 1816.]

With regard to the other topics embraced in the conference, I can only now state in a summary manner that I think the proposal for mutually disarming on the lakes of Canada, which I made conformably to your instructions, will not be accepted.

On the 8th of February, however, Mr. Adams wrote to Mr. Monroe more fully, reporting his presentation of the proposal and the views of Lord Castlereagh thereon, as follows:

[Mr. Adams to Mr. Monroe, February 8, 1816.]

By way of introduction to the proposals which I was instructed to make to this Government, in relation to the naval armaments on the Canadian lakes, I observed to Lord Castlereagh, at the conference with him on the 25th ultimo, that next to the subject of seamen and impressment the most dangerous source of disagreement between the two countries arose in Canada. It had occasioned much mutual ill will heretofore, and might give rise to great and frequent animosities hereafter, unless guarded against by the vigilance, firmness, and decidedly pacific dispositions of the two Governments; that there were continual tendencies to bad neighborhood and even to acts of hostility in that quarter, proceeding from three distinct causes, the Indians, the temper of the British local authorities, and the British armament on the lakes.

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But the most important circumstance was the increase of the British armaments upon the Canadian lakes since the peace. Such armaments on one side rendered similar and counter armaments on the other indispensable. Both Governments would thus be subjected to heavy, and, in time of peace, useless expenses; and every additional armament would create new and very dangerous

incitements to mutual irritation and acts of hostility. That the American Government, anxious above all for the preservation of peace, had authorized me to propose a reduction of the armaments upon the lakes on both sides. The extent of this reduction the President left at the pleasure of Great Britain, observing that the greater it would be the more it would conform to his preference, and that it would best of all suit the United States if the armaments should be confined to what is necessary for the protection of the revenue. Lord Castlereagh admitted that the proposal was perfectly fair, and assured me that so far as it manifested pacific and amicable dispositions it would meet with the sincerest reciprocal dispositions on the part of this Government. He inquired if it was meant to include in this proposition the destruction of the armed vessels already existing there. I answered that as it was not so expressed in my instructions, I did not understand them to include that; but if the principle should be acceptable to Great Britain, there would be ample time to consult the American Government with regard to details. The immediate agreement which I was directed to propose was that there should be no new armament on either side. He replied that, as to keeping a number of armed vessels parading about upon the lakes in time of peace, it would be ridiculous and absurd. There could be no motive for it, and everything beyond what should be necessary to guard against smuggling would be calculated only to produce mischief; that he would submit the proposal to the consideration of His Majesty's Government. But we were aware that Great Britain was on that point the weaker party, and therefore it was that she had proposed at the negotiation of Ghent that the whole of the lakes, including the shores, should belong to one party. In that case there would have been a large and wide natural separation between the two territories, and there would have been no necessity for armaments.

He expressed a strong predilection in favor of such broad natural boundaries, and appeared to consider the necessity for Great Britain to keep up considerable naval force on her side of the lakes as resulting from the objections made on the part of the United States to the expedient for preserving the future peace between the two countries proposed by Great Britain upon that occasion. He said that just before the conclusion of the peace Great Britain had been under the necessity of making extraordinary exertions and to build a number of new vessels upon the lakes to enable her to maintain her footing there; and when I remarked that this was not what had drawn the animadversion of the American Government, but the new armaments—vessels of war begun and built since the peace—he replied that we had so much the advantage over them there by our position that a mutual stipulation against arming, during the peace, would be unequal and disadvantageous in its operation to Great Britain. For as the hands of both parties would, by such an engagement, be tied until war should have commenced, the Americans by their proximity would be able to prepare armaments for attacks much sooner than those of the British could be prepared for defense. I urged that as at all events the state of the armaments during peace, on one side, must be the measure of those on the

other, this advantage of proximity must be nearly the same whether they are great or small; that the agreement to forbear arming in time of peace would rather diminish than add to it, and that a war could not break out, on the part of the United States, suddenly or without such a previous state of the relations between the two nations as would give the British Government warning to be prepared for the event and to take such measures as might enable them to arm on the lakes when the war commenced quite as rapidly and effectually as the United States could do on their side. But although Lord Castlereagh promised to submit the proposal to the cabinet, his own disinclination to accede to it was so strongly marked that I can not flatter myself it will be accepted. The utmost that they may be induced to consent to may be an arrangement to limit the force which either party shall keep in actual service upon the lakes.

With his dispatch No. 36 of March 22, 1816, Mr. Adams sent a copy of a note addressed by him, under date of March 21, to Lord Castlereagh concerning several pending questions, and said: "I have repeated the proposal for disarming on the lakes, but without hopes of success." In that note to the British secretary of foreign affairs Mr. Adams said:

[Mr. Adams to Viscount Castlereagh, March 21, 1816.]

On this occasion the undersigned begs leave to remind Lord Castlereagh of the proposition which, by instruction from the American Government, he had the honor of making to his lordship on the 25th of January last, relative to naval armaments upon the North American lakes. It is the sincere wish and, so far as depends upon them, the determined intention of the American Government, that the peace so happily restored between the two countries should be cemented by every suitable measure of conciliation and by that mutual reliance upon good faith far better adapted to the maintenance of national harmony than the jealous and exasperating defiance of complete armor. The undersigned mentioned to his lordship the incident of an American merchant vessel having been fired upon by a British armed vessel upon Lake Erie. The increase of naval armaments on one side upon the lakes, during peace, will necessitate the like increase on the other, and besides causing an aggravation of useless expense to both parties must operate as a continual stimulus of suspicion and of ill will upon the inhabitants and local authorities of the borders against those of their neighbors. The moral and political tendency of such a system must be to war and not to peace. The American Government proposes mutually to reduce, to the same extent, all naval armaments upon those lakes. The degree to which they shall be reduced is left at the option of Great Britain. The greater the reduction, the more acceptable it will be to the President of the United States; and most acceptable of all, should it be agreed to maintain, on either side, during the peace, no other force than such as may be necessary for the collection of the revenue.

In submitting again this proposal to the consideration of His Majesty's Government the undersigned will not merely ask for a return to that frank and unsuspecting confidence in which it originated and of which it is the proof. If it be fitting that the maxims of a more guarded and cautious policy should also be called to share in the deliberation he will request Lord Castlereagh to bear in mind that the whole military peace establishment of the United States scarcely equals the number of troops intended to be maintained by Great Britain in the colonies of Nova Scotia and Canada alone, and that no act of offensive hostility against any foreign nation can be authorized by the Executive of the United States without the sanction of a previous act of Congress, in whom alone is vested by the Constitution the power of declaring war. With these securities against the possibility of a sudden or unforeseen attack from the United States upon the British North American colonies, added to those which Great Britain must derive from the great superiority of the British power upon the ocean, and from the removal of all the real and even of the principal of the apprehended causes of the late unhappy contest between the two nations, the undersigned may confidently hope that this proposal mutually and equally to disarm upon the American lakes will be received and entertained in the same spirit in which it was made, as a pledge of intentions sincerely friendly and earnestly bent upon the permanent preservation of peace.

Nine days later Mr. Adams, under date of March 30, 1816, wrote to Mr. Monroe as follows:

[Mr. Adams to Mr. Monroe, March 30, 1816.]

Lord Castlereagh has not yet replied to any other of my late notes. You may, however, consider it as certain that the proposal to disarm upon the lakes will not be accepted. In all the late debates in Parliament upon what they *call* their Military and Naval *Peace* Establishment the prospect of a new war with the United States has been distinctly held up by the ministers and admitted by the opposition as a solid reason for enormous and unparalleled expenditure and preparation in Canada and Nova Scotia. We hear nothing now about the five fir frigates and the bits of striped bunting. The strain is in a higher mood. Lord Castlereagh talks of the great and growing military power of the United States. The Marquis of Lansdowne, an opposition leader and one of the loudest trumpeters for retrenchment and economy, still commends the ministers for having been *beaten* into the policy of having a naval superiority upon the lakes. And one of the lords of the admiralty told the House of Commons last Monday that bumboat expeditions and pinchbeck administrations would no longer do for Canada; that Englishmen must lay their account for fighting battles in fleets of three-deckers on the North American lakes. All this is upon the principle of preserving peace by being prepared for war. But it shows to demonstration what will be the fate of the proposal for disarming.

In those days of slow communication between the two countries by monthly sailing packets, two months often passed before a dispatch or instruction reached its destination. Mr. Adams's dispatch of March 22, 1816, was thus acknowledged and his note of the 21st of that month to Lord Castlereagh approved by Mr. Monroe on the 21st of May following:

[Mr. Monroe to Mr. Adams, May 21, 1816.]

It is hoped that your proposition respecting the naval force to be retained on the lakes will be more successful than you had reason to expect from the remarks of Lord Castlereagh in your conference with him and his omission to answer your note on the subject at the date of your last letter to me. The proposition, in the manner and extent, was in strict conformity with the views of the President. He would, however, be satisfied to prevent the augmentation of the force, leaving it on both sides in the present state, and when it is considered that Great Britain has the ascendancy on Lake Ontario, which bears more immediately on Canada, and that the United States have it on Erie and Huron, which is important only in relation to the savages within our limits, it is not perceived on what ground it can be refused.

Mr. Monroe's anticipation of a favorable result despite Mr. Adams's forebodings of failure was speedily confirmed, and indeed, even while he was thus expressing his hopes of a better disposition on the part of the British Government, a dispatch from Mr. Adams was already on its way across the ocean, reporting Lord Castlereagh's acceptance of the proposition in principle. Under date of April 15, 1816, Mr. Adams wrote:

[Mr. Adams to Mr. Monroe, April 15, 1816.]

At the request of Lord Castlereagh I called upon him last Tuesday, when he informed me that the British Government were prepared to make an arrangement on the questions relating to the fisheries and to meet that of the Government of the United States relative to naval armaments, on the North American lakes, so far as to avoid everything like a contention between the two parties which should have the strongest force there. He asked me if I considered my power adequate and if I had instructions that would authorize me now to conclude an agreement upon these points. I told him that I did not consider my power as extending to the first and should not feel myself warranted in concluding an article upon the second without further instructions.

\* \* \* \* \*

With regard to the force upon the lakes, he said excepting the vessels which

might be necessary to convey troops occasionally from station to station, the British Government did not wish to have any ships in commission or in active service; and all the armed vessels now existing there might be laid up, as it was called here, in ordinary. I said that understanding it as now agreed that no new or additional force should be commenced upon the lakes on either side for the present, and all the effects of a positive engagement as existing from this time, there would be ample time for the concerting of an express article which might be satisfactory to both Governments, and in many respects it might be most convenient that this should be concluded at Washington. I therefore readily assented to his suggestion and wished that a power and instructions should be sent out to Mr. Bagot upon both the points, which I trust will immediately be done.

Lord Castlereagh appears to have acted promptly upon Mr. Adams's suggestion, and the necessary authority and instructions were forwarded to the British minister at Washington, the Right Honorable Charles Bagot, who had previously presented his credentials to the President on March 21, 1816. Conferences seem to have followed between Mr. Bagot and the Secretary of State in regard to the several pending questions, and particularly that of the lake armaments. On July 8, 1816, Mr. Monroe wrote to Mr. Adams:

[Mr. Monroe to Mr. Adams, July 8, 1816.]

Mr. Bagot has received a power to arrange the difference respecting the taking and curing and drying fish on the shores of the British colonies, but whether it authorizes such an arrangement as will be useful and satisfactory to us I am as yet uninformed. He has also a power to regulate the naval force to be maintained on the lakes on each side, the nature and extent of which I have also yet to learn. This power to Mr. Bagot will diminish as to these objects the authority which has been sent to you. In every other respect your power will remain in full force and, we hope, produce the salutary effect contemplated by it.

The "power" thus referred to was dated May 21, 1816, and differed from the formal type of a full power in being addressed to Mr. Adams himself, not to the representatives of the Government with which he was to negotiate. It did not in terms contemplate any arrangement for the restriction or disarmament of the respective naval forces on the lakes, but generally authorized him to negotiate a special convention for the commerce between the United States and the British Colonies in North America and the West Indies, and also to adopt such regula-

tions with respect to seamen and for other purposes as may be calculated to promote the advantage of both nations. So far as related to the question of the armaments to be maintained on the lakes, Mr. Adams' connection with the matter thereupon ceased.

Mr. Bagot's powers would seem to have been express, although no record of their terms is found. He speedily opened the negotiation thus transferred to Washington by addressing to Mr. Monroe the following note, dated July 26, 1816:

[Mr. Bagot to Mr. Monroe, July 26, 1816.]

Mr. Adams having intimated to his Majesty's Government that it was the wish of the Government of the United States that some understanding should be had or agreement entered into between the two countries in regard to their naval armaments upon the lakes, which, while it tended to diminish the expenses of each country, might diminish also the chances of collision and prevent any feelings of jealousy, I have the honor to acquaint you that I have received Lord Castlereagh's instructions to assure you that His Royal Highness the Prince Regent will cheerfully adopt, in the spirit of Mr. Adams's suggestion, any reasonable system which may contribute to the attainment of objects so desirable to both States. Mr. Adams not having entered into any detailed explanation of the precise views of his Government for giving effect to the principle which he had offered for consideration, the British Government is unacquainted with the particular arrangements which the Government of the United States would propose to make for this purpose, but I have been instructed to assure you of the general disposition of His Royal Highness the Prince Regent to listen with satisfaction to any proposal which may secure such ends, and of his readiness to act in a spirit of the most entire confidence upon the principle which has been suggested by Mr. Adams.

Mr. Monroe replied to Mr. Bagot, fully setting forth the views and desires of the Government of the United States, his note being dated August 2, 1816, as follows:

[Mr. Monroe to Mr. Bagot, August 2, 1816.]

I have had the honor to receive your letter of the 26th of July, by which you inform me that Mr. Adams had intimated to your Government the desire of the President to arrange by compact the naval force which should be retained on the lakes by both nations, with a view to lessen equally the expense of each and likewise to guard against collision, but that he had not explained in sufficient detail the proposal which he had been authorized to make to lead, at that time, to any practical result. You assure me that His Royal Highness the Prince Regent is well disposed to the object, and that in concert with this

Government he is willing to adopt such measures as may be deemed expedient to give it effect.

The President being satisfied that if each nation should maintain on the lakes a large naval force it would expose both to considerable and useless expense, while it would multiply the risks of collision between them, instructed Mr. Adams, shortly after the peace, to make the proposal which you mention in the hope, from the amicable spirit in which it was conceived and the advantage which it was believed both parties would derive from it, that it might be carried into immediate effect. It is very satisfactory to the President to find that your Government approves the principle on which the proposal is founded and that His Royal Highness the Prince Regent is willing to act on it.

I infer from your letter that you are desirous of obtaining a precise project, either for the purpose of acting on it here immediately, in conformity with the powers already given you, or of transmitting it to your Government for its consideration. Whether it be for the one or the other purpose, I am instructed to afford all the facility that I may be able; though it would undoubtedly be more agreeable to the President that the arrangement should be made and executed with the least delay possible.

I have the honor now to state that the President is willing, in the spirit of the peace which so happily exists between the two nations and until the proposed arrangement shall be canceled in the manner hereinafter suggested, to confine the naval force to be maintained on the lakes on each side to the following vessels, that is: On Lake Ontario to one vessel not exceeding 100 tons burthen and one 18-pound cannon, and on the Upper Lakes to two vessels of like burthen and force, and on the waters of Lake Champlain to one vessel not exceeding the like burthen and force; and that all other armed vessels on those lakes shall be forthwith dismantled, and likewise that neither party shall build or arm any other vessel on the shores of those lakes.

That the naval force thus retained by each party on the lakes shall be restricted in its duty to the protection of its revenue laws, the transportation of troops and goods, and to such other services as will in no respect interfere with the armed vessels of the other party.

That should either of the parties be of opinion hereafter that this arrangement did not accomplish the object intended by it, and be desirous of annulling it, and give notice thereof, it shall be void and of no effect after the expiration of — months from the date of such notice.

If this project corresponds with the views of your Government and you are authorized to accede to it under any modifications which you may propose and in which we can agree, I am instructed to give it immediate effect, either by convention, the interchange of notes, or in any form which may be thought best adapted to the ends proposed. If, on the other hand, you consider it your duty to submit this project to your Government for consideration and to await its sanction before you can adopt it, and have power to make, *ad interim*, any provisional reciprocal arrangement having the same objects in view, I shall be happy to digest with you such provisional arrangement and to carry it recip-

roccally into effect for such time and in such manner as may be agreed on; or should your power be adequate, I am ready to concur in an immediate suspension of any further construction or equipments of armed vessels for any of the waters above named.

To this proposal and inquiry Mr. Bagot replied on August 6, 1816, announcing his inability, under his instructions, to come to an immediate agreement. He said:

[Mr. Bagot to Mr. Monroe, August 6, 1816.]

The general coincidence of sentiment which exists between our Governments in regard to entering into some arrangement upon this subject gives reason to hope that the several parts of it will become matter of easy adjustment; but as, in the consideration of any precise proposition to this effect, reference must necessarily be had to various points connected with the internal administration of His Majesty's provinces and to the naval assistance which the ordinary business of a peace establishment may require, I am not authorized to conclude definitely any agreement as to details without previously submitting it to my Government.

I shall therefore immediately forward for consideration the proposal contained in your letter; but I shall, in the meantime, willingly take upon myself to give effect to any arrangement upon which we may eventually agree for the purpose of suspending the further construction and equipment of armed vessels upon the lakes and of generally abstaining from exertion in those quarters.

Besides this correspondence it would seem that Mr. Monroe and Mr. Bagot held several conferences on the subject, for, under date of August 13, 1816, Mr. Monroe wrote an instruction to Mr. Adams at London, in which he said:

[Mr. Monroe to Mr. Adams, August 13, 1816.]

In consequence of instructions to Mr. Bagot, I have had several communications with him relative to the naval force to be retained on the lakes by each power, and also respecting the right of curing and drying fish on the shores of the British Provinces, northward of the United States, without having concluded a definite arrangement on either subject.

On the first, it appeared that Mr. Bagot's power was limited to a right to agree to suspend the further augmentation of the naval force on those waters, without fixing its maximum by any rational standard to the number of vessels, for example, which would be necessary for the support of the revenue laws, and that he was bound to communicate to his Government any precise proposi-

tion which might be made to that effect, and to await its order respecting it. I made to him such a proposition, having in view the object mentioned, as well as the other important objects of economy and a desire to avoid irritation and collision. The affair terminated in an agreement on the point to which alone his power extended, and an understanding that he should transmit the specific proposition to his Government for consideration. On this point several notes have passed between us. \* \* \* It is probable that the arrangement of these two interests will again rest with you. The advantage of it, as you are already authorized to treat on other important subjects, is obvious.

The latest of the communications thus referred to is a note which on the previous day, August 12, Mr. Monroe had addressed to Mr. Bagot for the purpose of closing with his provisional plan for suspending the augmentation of the respective naval forces on the lakes, as follows:

[Mr. Monroe to Mr. Bagot, August 12, 1816.]

I have had the honor to receive your letter of the 6th of this month, by which you inform me that, although you have full confidence that an agreement will finally be entered into by our Governments to limit in a satisfactory manner the naval force to be maintained by them on the lakes, you consider it your duty to submit to your Government the project which I lately communicated to you to that effect and to await its orders before you can proceed to make a definitive arrangement on the subject. You intimate, however, that you are willing to give effect to any arrangement on which we may agree for suspending in the meantime the further construction and equipment of armed vessels on the lakes and for abstaining from further exertion there.

To this delay no objection is entertained, provided such a provisional arrangement is made as may accomplish the just objects which our Governments have in view. This arrangement, however, like the other, should be equal. In the same spirit, therefore, I now propose the regulations stated in my former note, to be adopted as a provisional arrangement. If your powers authorize, and you approve those regulations, on being assured that you will adopt a similar measure an order will be immediately issued by this Government for carrying them fully into effect.

If your powers do not extend to this object, but are confined exclusively to the suspension of the further augmentation of the naval force on the lakes, I have then to observe that on receiving from you a statement of the force which your Government now has on the lakes, with an assurance that its further augmentation shall be suspended, an order will be immediately issued by this Government for confining the naval force of the United States there strictly within the same limit. \* \* \*

Mr. Bagot replied the next day, August 13, 1816, practically closing the provisional arrangement to suspend the further increase of the forces on the lakes, by saying:

[Mr. Bagot to Mr. Monroe, August 13, 1816.]

For the same reasons which I have assigned in the letter which I had the honor to address to you on the 6th instant I conceive that I am not authorized to make, even provisionally, any precise agreement as to the exact manner in which the respective naval forces upon the lakes shall be limited, as in any such agreement, whether permanent or provisional, reference must equally be had to the arrangement of a peace establishment and the ordinary administration of His Majesty's provinces.

I am not in possession of a correct statement of His Majesty's naval force now in commission upon the lakes, but I will take the earliest means of procuring and communicating to you the most accurate information upon this point; *and I can in the meantime give you the assurance that all further augmentation of it will be immediately suspended.*

Two points are to be borne in mind in examining the preceding correspondence, that Mr. Bagot's powers, while explicit as to the subjects of negotiation, do not appear to have authorized him to conclude any formal convention as to either the agreement to mutually limit the naval forces on the lakes or the pending questions in regard to the Newfoundland fisheries; and that as to the latter question Mr. Monroe's negotiations with Mr. Bagot did not result in any conventional agreement, the treaty of October 20, 1818, having been in the end negotiated and signed at London by Mr. Gallatin and Mr. Rush on behalf of the United States and Mr. Robinson and Mr. Goulburn on behalf of Great Britain as special plenipotentiaries. As has been said, no record is found in the Department of State of the text of Mr. Bagot's or Mr. Monroe's powers to negotiate on either of the subjects they considered; but the internal evidence of the correspondence exchanged, as well as the shape eventually taken by the agreement to restrict the respective armaments on the lakes, indicates that the powers of the negotiators in this regard did not go beyond a simple agreement or arrangement to that end and stopped short of authority to conclude a formal treaty.

The matter rested in abeyance until the following November, probably owing to Mr. Bagot having sought from the home Government, and not from the British authorities in the provinces, the promised

information in regard to the exact force then maintained by Great Britain on the lakes. Under date of November 4, 1816, Mr. Bagot wrote to Mr. Monroe:

[Mr. Bagot to Mr. Monroe, November 4, 1816.]

In conformity with the arrangement made between us in our correspondence of the 12th and 13th of August last, I have now the honor to inclose to you an account of the actual state of His Majesty's naval force upon the lakes and to acquaint you that its further augmentation is suspended until the sentiments of His Majesty's Government upon the project contained in your note of the 5th (2d) of August, and which I transmitted to Lord Castlereagh, are known.

The statement accompanying this note showed 28 vessels afloat on the lakes (including Lake Champlain), besides two 74-gun ships on the stocks on Lake Ontario, and the "keel, stem, and sternpost of a frigate laid down at the Isle aux Noix" on Lake Champlain. Of this formidable force 13 were "laid up in ordinary," 1 "condemned as unfit for service," 1 "hauled up in the mud and condemned likewise," 1 "used for current duties only and unfit for actual service," 1 "carrying no guns," and 1 used for transporting stores, leaving an effective armed force of 10 vessels, as follows:

On Lake Ontario: *Prince Regent*, 60 guns, in commission, but unequipped, being used merely as a barrack or receiving ship; *Montreal*, 6 guns, in commission as a transport on Lake Erie; *Tecumseh*, 4 guns; *Newark*, 4 guns; *Huron*, 1 gun; *Sauk*, 1 gun. Used principally as transports.

On Lake Huron: *Confiance*, 1 gun; *Surprise*, 1 gun. Used for purposes of transport only.

On Lake Champlain: A gunboat, 4 guns; a gunboat, 3 guns. Used as guard boats.

On November 7, 1816, Mr. Monroe replied accepting Mr. Bagot's communication as in conformity to one of the propositions theretofore made on behalf of the United States, and adding:

[Mr. Monroe to Mr. Bagot, November 7, 1816.]

I have now the honor to inclose to you an account of the actual state of the naval force of the United States on the lakes, and to assure you that orders will be immediately given by this Government to prevent any augmentation of it beyond the limit of the British naval force on those waters.

The counter-statement of the actual force of the United States on the lakes is not yet found on record in the Department of State.

Here again the matter rested for a time, not however to Mr. Monroe's satisfaction, for, under date of November 14, 1816, he wrote to Mr. Adams:

[Mr. Monroe to Mr. Adams, November 14, 1816.]

The transfer of the negotiation from London to this city for the regulation of the naval force on the lakes on each side, and the limited powers that were given to Mr. Bagot, had much the appearance that the object was to amuse us rather than to adopt any effectual measure for that purpose. The supply in the interim of Canada with a vast amount of cannon and munition of war is a circumstance which has not escaped attention.

Mr. Monroe's proposition of August 2, 1816, for a specific and equal limitation of the respective naval forces on the lakes did not take definite shape until the spring of the ensuing year, when a formal agreement was entered into by means of the diplomatic device known as an exchange of notes, on the 28th and 29th of April, 1817. The notes so exchanged read as follows:

WASHINGTON, April 28, 1817.

The undersigned, His Britannic Majesty's envoy extraordinary and minister plenipotentiary, has the honor to acquaint Mr. Rush that, having laid before His Majesty's Government the correspondence which passed last year between the Secretary of the Department of State and the undersigned upon the subject of a proposal to reduce the naval force of the respective countries upon the American lakes, he has received the commands of His Royal Highness the Prince Regent to acquaint the Government of the United States that His Royal Highness is willing to accede to the proposition made to the undersigned by the Secretary of the Department of State in his note of the 2d of August last.

His Royal Highness, acting in the name and on the behalf of His Majesty, agrees that the naval force to be maintained upon the American lakes by His Majesty and the Government of the United States shall henceforth be confined to the following vessels on each side, that is—

On Lake Ontario to one vessel not exceeding 100 tons burden and armed with one 18-pound cannon.

On the upper lakes to two vessels not exceeding like burden each and armed with like force.

On the waters of Lake Champlain to one vessel not exceeding like burden and armed with like force.

And His Royal Highness agrees that all other armed vessels on these lakes

shall be forthwith dismantled, and that no other vessels of war shall be there built or armed. His Royal Highness further agrees that if either party should hereafter be desirous of annulling this stipulation, and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.

The undersigned has it in command from His Royal Highness the Prince Regent to acquaint the American Government that His Royal Highness has issued orders to His Majesty's officers on the lakes directing that the naval force so to be limited shall be restricted to such services as will in no respect interfere with the proper duties of the armed vessels of the other party.

Th undersigned has the honor to renew to Mr. Rush the assurances of his highest consideration.

CHARLES BAGOT.

DEPARTMENT OF STATE, *April 29, 1817.*

The undersigned, Acting Secretary of State, has the honor to acknowledge the receipt of Mr. Bagot's note of the 28th of this month, informing him that, having laid before the Government of His Britannic Majesty the correspondence which passed between the Secretary of State and himself upon the subject of a proposal to reduce the naval force of the two countries upon the American lakes, he has received the commands of His Royal Highness the Prince Regent to inform this Government that His Royal Highness was willing to accede to the proposition made by the Secretary of State in his note of the second of August last.

The undersigned has the honor to express to Mr. Bagot the satisfaction which the President feels at His Royal Highness the Prince Regent's having acceded to the proposition of this Government as contained in the note alluded to. And in further answer to Mr. Bagot's note, the undersigned, by direction of the President, has the honor to state that this Government, cherishing the same sentiments expressed in the note of the second of August, agrees that the naval force to be maintained upon the lakes by the United States and Great Britain, shall, henceforth, be confined to the following vessels on each side, that is—

On Lake Ontario to one vessel not exceeding 100 tons burden, and armed with one 18-pound cannon. On the upper lakes to two vessels not exceeding the like burden each, and armed with like force, and on the waters of Lake Champlain to one vessel not exceeding like burden and armed with like force.

And it agrees that all other armed vessels on these lakes shall be forthwith dismantled, and that no other vessels of war shall be there built or armed. And it further agrees that if either party should hereafter be desirous of annulling this stipulation and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.

The undersigned is also directed by the President to state that proper orders will be forthwith issued by this Government to restrict the naval force thus

limited to such services as will in no respect interfere with the proper duties of the armed vessels of the other party.

The undersigned eagerly avails himself of this opportunity to tender to Mr. Bagot the assurances of his distinguished consideration and respect.

RICHARD RUSH.

The arrangement thus effected seems not to have suggested at the time any doubts as to its regularity or sufficiency, or as to the entire competence of the executive branch of the Government to enter into it and carry out its terms. Mr. Rush, on April 30, 1817, sent to Mr. Crowninshield, the Secretary of the Navy, a copy of his note of the preceding day to Mr. Bagot, which he describes as "a stipulation which has been entered into with the British Government relative to the reduction of the naval force upon the lakes," and, in conformity with the President's desire, requested the issuance by the Navy Department of "such orders as may be necessary for giving all the contemplated effect to the stipulation in question." This was promptly done, and on the 2d of May the Secretary of the Navy instructed the several naval commanders on Lake Erie and the upper lakes, Lake Ontario and Lake Champlain, to confine the force in actual or occasional service within the limits defined in the arrangement. Under these orders, the schooner *Lady of the Lake*, 89 tons, was assigned to Lake Ontario; the smaller schooners *Porcupine* and *Ghent* to the upper lakes, and the galley *Allen* to Lake Champlain.

It was not until nearly a year later that any uncertainty appears to have arisen as to the character of the arrangement, suggesting that it might in fact so far partake of the nature of a foreign treaty as to call for the advice and consent of the Senate. The occasion of this suggestion is not disclosed by an examination of the correspondence on file in the Department of State, nor is any reference to the subject found in the Journals of Congress for that session. Out of abundant caution, in view of his constitutional relations to the Senate in regard to matters of foreign intercourse, President Monroe communicated to that body on April 6, 1818, the correspondence exchanged on the subject of the naval armaments on the lakes, with the following message:

*To the Senate of the United States:*

An arrangement having been made and concluded between this Government and that of Great Britain with respect to the naval armament of the two

Governments, respectively, on the lakes, I lay before the Senate a copy of the correspondence upon that subject, including the stipulations mutually agreed upon by the two parties. I submit it to the consideration of the Senate whether this is such an arrangement as the Executive is competent to enter into by the powers vested in it by the Constitution, or is such a one as requires the advice and consent of the Senate, and, in the latter case, for their advice and consent, should it be approved.

JAMES MONROE.

APRIL 6, 1818.

This message, with an accompanying selection of the correspondence on the subject is printed in the folio collection of American State Papers, Vol. IV, p. 202, *et seq.*, as Document No. 301, Fifteenth Congress, first session.

Upon being received, in executive session, on April 6, 1818, the message and documents were read and referred to the Committee on Foreign Relations to consider and report thereon. On April 13, Mr. Barbour, from that committee, reported a favorable resolution as follows:

*Resolved (two-thirds of the Senators present concurring therein), That the Senate do approve of, and consent to, the arrangement made in April, 1817, and contained in the President's message of the 6th of April, 1818, between the United States and His Britannic Majesty, relative to the naval force of the respective nations to be maintained on the lakes; and recommend that the same be carried into effect by the President of the United States.*

It was read a second time and considered as in Committee of the Whole and, no amendments having been proposed, it was reported and ordered to a third reading on the ensuing Thursday, the 16th of April, when it was agreed to by the unanimous affirmative vote of thirty Senators. It was further ordered that the Secretary of the Senate "lay the foregoing resolution before the President of the United States."

Following the usual routine in such cases, the arrangement was ratified and proclaimed by the President on April 28, 1818, the specific stipulations of the agreement being extracted from the correspondence exchanged between Mr. Rush and Mr. Bagot the year before, and embodied in the text of the proclamation, as follows:

## BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

Whereas an arrangement was entered into at the city of Washington, in the month of April, in the year of our Lord one thousand eight hundred and seventeen, between Richard Rush, esq., at that time acting as Secretary for the Department of State of the United States, for and in behalf of the Government of the United States, and the Right Honorable Charles Bagot, His Britannic Majesty's envoy extraordinary and minister plenipotentiary, for and in behalf of His Britannic Majesty, which arrangement is in the words following, to wit:

"The naval force to be maintained upon the American lakes by His Majesty and the Government of the United States shall henceforth be confined to the following vessels on each side, that is—

"On Lake Ontario to one vessel not exceeding one hundred tons burden, and armed with one eighteen-pound cannon.

"On the upper lakes to two vessels not exceeding like burden each, and armed with like force.

"On the waters of Lake Champlain to one vessel not exceeding like burden, and armed with like force.

"All other armed vessels on those lakes shall be forthwith dismantled, and no other vessels of war shall be there built or armed.

"If either party should be hereafter desirous of annulling this stipulation, and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.

"The naval force so to be limited shall be restricted to such service as will in no respect interfere with the proper duties of the armed vessels of the other party."

And whereas the Senate of the United States have approved of the said arrangement and recommended that it should be carried into effect, the same having also received the sanction of His Royal Highness the Prince Regent, acting in the name and on the behalf of His Britannic Majesty;

Now, therefore, I, James Monroe, President of the United States, do, by this my proclamation, make known and declare that the arrangement aforesaid, and every stipulation thereof, has been duly entered into, concluded, and confirmed, and is of full force and effect.

Given under my hand, at the city of Washington, this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and eighteen, and of the independence of the United States the forty-second.

JAMES MONROE.

By the President:

JOHN QUINCY ADAMS, *Secretary of State.*

This proclamation was not published in the collection of Statutes at Large until some forty years later, when it appeared in company with a number of similarly belated proclamations. (Statutes, XI, 766.)

Although the proclamation recites that the arrangement, in addition to the approval of the Senate, had "also received the sanction of His Royal Highness the Prince Regent, acting in the name and on the behalf of His Britannic Majesty," no record is found of any communication of such ratifying sanction to the Government of the United States, or any declaration other than that contained in Mr. Bagot's note to Mr. Rush of April 18, 1818. No trace of any confirmatory order in council is found in the British printed collections, and no evidence exists that the arrangement received on the part of Great Britain the formalities usually accorded to a treaty. The only publication of it in the British and Foreign State Papers is on pp. 1200-1201, Vol. 5, 1817-18, where the President's proclamation is textually reproduced. The proclamation does not appear even to have been officially communicated to the British minister, Mr. Bagot, by the Secretary of State.

It seems evident, therefore, that at no time during the negotiations or at its completion did the arrangement in question take the shape of a formal international treaty. As between the United States and Great Britain it never passed beyond the stage of an agreement by exchange of notes, to which each party proceeded to give effect in the manner permitted or prescribed in its own domestic sphere of action. The procedure of the Senate in advising and consenting to it, and of the President in proclaiming it, was wholly municipal. No exchange of ratifications took place. The agreement became effective, by means of executive orders on each side, from the date of the original exchange of notes.

It may be proper here to observe that the resort of an exchange of diplomatic notes has often sufficed, without any further formality of ratification or exchange of ratifications, or even of proclamation, to effect purposes more usually accomplished by the more complex machinery of treaties. A striking proof of this is found in the relations between the United States and Great Britain. On December 9, 1850, in a conference held at the foreign office in London between the United States minister, Abbott Lawrence, and Lord Palmerston, it was agreed that the Canadian territory of Horse-shoe Reef, in the Niagara River, should be ceded to the United States for the purpose of erecting a light-house thereon. A memorandum, or protocol, of this agreement was drawn up and signed by Mr. Lawrence and Lord

Palmerston. On receipt of this protocol, Mr. Webster, January 17, 1851, instructed Mr. Lawrence to "address a note to the British secretary of state for foreign affairs, acquainting him that the arrangement referred to is approved by this Government." Mr. Lawrence did so on the 10th of February, 1851, and the acknowledgment of his note by the British secretary of state closed the transaction. No ratification occurred on either side. Congress appropriated money for the erection of a light-house, which was built; and the United States thus possesses and exercises full jurisdiction over territory acquired by cession from a foreign power without a treaty.

Another instance occurred with Spain in 1871. Negotiations had been pending for more than a year at Madrid for the settlement of certain claims of citizens of the United States on account of wrongs and injuries committed by the authorities of Spain in the island of Cuba. An understanding as to the basis of settlement having been reached by successive steps in conference and by correspondence, General Sickles, on February 11, 1871, addressed to the Spanish minister of state, Don Cristino Martos, a note formulating his understanding of the agreement. Señor Martos replied, February 12, 1871, by simply acknowledging receipt of General Sickles' statement, and adding, "I take pleasure in informing you that I entirely concur in the contracts of the said memorandum." No treaty, or protocol even, was signed by the empowered representatives, and no exchange of ratification or proclamation took place. The settlement was reported to Congress for its information, appropriations were voted to carry on the arbitration, an international commission was organized, and after nearly twelve years of labor, during which 140 cases were examined, awards against Spain were made to the amount of \$1,293,450.55 and duly paid to the United States, all this being accomplished by a mere exchange of notes.

In the two instances thus cited the arrangements entered into were not self-executing within the normal functions of the executive branch of the Government, but required legislation and appropriation by Congress to carry them into effect, as, indeed, they would have required had the engagements taken the form of a treaty, ratified on both sides and duly exchanged and proclaimed on both sides. The arrangement of 1817 for the mutual reduction and restriction of the respective armed naval forces on the Great Lakes was self-executory, requiring

neither legislation nor appropriation at the time to render it effective on the part of either the United States or Great Britain. As has been seen, the executive orders of the Secretary of the Navy sufficed for full compliance with its terms for a year after its adoption. The existing legislation gave to the Secretary of the Navy ample discretion as to the force to be employed on the lakes. The appropriations for the maintenance of such force were general in their terms. By the act of June 12, 1798, there was appropriated "For the construction and repair of certain vessels on the lakes, in the service of Government, and the pay and subsistence of the officers and crews of the same, sixteen thousand seven hundred dollars." (Statutes, I, 564.) By the act of March 3, 1813, supplementary to the act for increasing the Navy, in view of pending hostilities with Great Britain, the President was "authorized to have built, or procured, such a number of sloops of war or other armed vessels, to be manned, equipped, and commissioned, as the public service may require, on the lakes." (Statutes, II, 821.) By the additional appropriation act of April 18, 1814, it was enacted "That the sum of six hundred and twenty-five thousand dollars be, and the same is hereby, appropriated for the purpose of defraying the expenses which have been or may be incurred in building and equipping vessels of war on Lakes Ontario and Champlain," to be paid out of certain designated or available appropriations. (Statutes, III, 139.)

Immediately upon the exchange and proclamation of the treaty of Ghent, by which peace was restored, it was provided, by the act of February 27, 1815, "That the President of the United States be, and he hereby is, authorized to cause all the armed vessels thereof on the lakes, except such as he may deem necessary to enforce the proper execution of the revenue laws, to be sold or laid up, as he may judge most conducive to the public interest; such vessels being first divested of their armament, tackle, and furniture, which are to be carefully preserved." (Statutes, III, 217.) At the time, therefore, of the arrangement of 1817 the force to be maintained by the United States upon the lakes was discretionary with the Executive. Nor was this discretion impaired by succeeding legislation. A still further reduction of the lake force was permitted by the act of March 3, 1825, which authorized the President "to cause to be sold, at such time and in such manner as he shall judge best for the public interest, \* \* \* the

whole of the public vessels upon Lakes Erie, Ontario, and Champlain, except the ships of the line, *New Orleans* and *Chippewa*, now on the stocks, under cover, at Sackett's Harbor." (Statutes, IV, 131.)

The earliest legislation in any way confirmatory or recognitory of the arrangement of 1817 is found in the act of September 9, 1841, which appropriated "For the construction or armament of such armed steamers or other vessels for defense on the northwestern lakes as the President may think proper and as may be authorized by the existing stipulations between this and the British Government, one hundred thousand dollars." (Statutes, V, 460.) It thus appears that during the first fifty years of national legislation the number, character, and distribution of the naval vessels of the United States on the Great Lakes and Lake Champlain was left by Congress to the discretion of the President, within the limits of appropriations actually made.

A similar discretion appears to have been exercised by the British Government. No exact statement of the assignment of British naval vessels for service on the lakes is found of record other than the list communicated by Mr. Bagot to Mr. Rush, November 4, 1816, which, as a maximum of force, considerably exceeded the subsequent assignment of the United States war vessels by the Secretary of the Navy after the conclusion of the arrangement of 1817. It would seem that the respective naval forces on the lakes remained in substantial equilibrium for many years thereafter. At any rate it is unlikely that the force of the United States should have been allowed to degenerate, even to the extent of almost complete disappearance, under the authority of the act of March 3, 1825, above quoted, if the British force had not kept pace with it in decline. Indeed, as will hereafter be seen, an officer so well qualified as General Brady, by reason of his important command on the northwestern frontier, did not know, in 1840, that any understanding whatsoever existed between the United States and Great Britain regulating their respective naval forces on the lakes.

## II

In 1838 attention was particularly drawn to the subject of the lake armaments by the occurrence of disturbances in Canada and the apprehension of organized hostilities against the authority of the Crown on the part of the so-called "Canadian Patriots." Alarmed at their

strength, and desirous of taking more effective steps to protect the long and exposed lake frontiers of Canada from attack, the British Government began to increase its naval force on the lakes. Prior to 1838 no British armed vessel had been maintained above Detroit during many years, while the force on Lakes Erie and Ontario was small and inadequate to cope with the apprehended danger.

In the month of January, 1838, a considerable number of the "Canadian Patriots" gained possession of Navy Island (belonging to Canada), in the Niagara River, whence to make a descent upon the opposite Canadian shore. The British authorities hired two or three lake schooners and armed and manned them for the purpose of frustrating the threatened invasion. These vessels do not appear to have emerged from the river into Lake Erie as cruisers while so armed and manned, but to have been discharged as soon as that particular danger had passed away. Later, in the summer and autumn of 1838, the authorities in Upper Canada employed one or more armed steamers, hired for the purpose and manned with a certain number of troops, to cruise on Lake Erie against apprehended incursions from the United States shores by the "Patriots." And after the burning of the British merchant steamer *Sir Robert Peel*, on the St. Lawrence, in 1838, and up to the close of navigation in that year, the Canadian authorities employed several hired steamers, besides barges, all armed and manned, cruising against parties of the "Canadian Patriots," principally on the St. Lawrence River, but, as would seem, at times emerging upon the Canadian waters of Lake Ontario. (Report of General Scott to the Secretary of War, March 23, 1840.)

In view of these defensive armaments being in excess of those permitted by the arrangement of 1817, Mr. Forsyth, then Secretary of State, in the latter part of 1838, invited the British minister, Mr. Fox, to a personal interview, and called his attention to the disregard by Her Majesty's colonial authorities of the conventional arrangement between the two countries as to the extent of their respective naval armaments upon the lakes. Subsequently Mr. Fox addressed to the Secretary of State the following note:

WASHINGTON, November 25, 1838.

SIR: I am informed by Her Majesty's authorities in Upper and Lower Canada that, in consequence of the unlawful and piratical acts of hostility to

which these provinces are at present exposed, it has been found necessary to equip under the British flag a more extensive naval armament upon the lakes and rivers which include the boundary line between the British and American possessions than either Government would be authorized to maintain according to the stipulations of the convention of 1817.

I certainly do not apprehend that any objection against this proceeding is likely to be raised on the part of the United States, but, in order to prevent the possibility of misapprehension in any quarter, I think it expedient to assure you that the armament is equipped for the sole purpose, as above expressed, of guarding Her Majesty's provinces against a manifest and acknowledged danger, and it will be discontinued at the earliest possible period after the causes which now create that danger cease to exist.

I have the honor to be, with great respect and consideration, sir, your most obedient and humble servant,

H. S. Fox.

This note does not appear to have been answered or even acknowledged by Mr. Forsyth. It is probable that, with the close of navigation in the St. Lawrence and the cessation during the winter of active operations by the "Canadian Patriots," the immediate necessity of formal action upon the British request, either by acquiescing in the proposed augmentation of the Canadian naval force on the lakes, or by denying it as incompatible with the existing stipulations, had passed. In fact, according to a report of General Scott, the season of 1839 was "a tranquil one," and he did not hear of a single armed British vessel on Lake Erie. (General Scott to the Secretary of War, March 23, 1840.)

This fact, coupled with the assurance given by Mr. Fox that the extraordinary armaments resorted to in 1838 would be discontinued at the earliest possible period after the causes which had created the danger should have ceased to exist, may explain Mr. Forsyth's silence, until the autumn of 1839, when he "made known, verbally, to Mr. Fox that, the causes assigned in his note no longer existing, the President expected that the British armament upon the lakes would be placed upon the footing prescribed by the convention. Mr. Fox engaged to communicate without delay to his Government the substance of the conversation between them; and expressed his own conviction that, if the winter then ensuing passed without renewed attempts to disturb the tranquillity of the Canadas, there could be no sufficient motive for either Government maintaining a force beyond that authorized by the

convention of 1817." (Report of Mr. Forsyth to the President, March 13, 1840.)

The movements set on foot by the "Canadian Patriots," who at times directed their operations from the territory of the United States or took refuge therein after defeat or when menaced by a superior force, had come to an end in 1839, and in his annual message to Congress, December 24, Mr. Van Buren stated that "there is every reason to believe that disturbances like those which lately agitated the neighboring British provinces will not again prove the sources of border contentions or interpose obstacles to the continuance of that good understanding which it is the mutual interest of Great Britain and the United States to preserve and maintain." He added:

On a review of the occurrences on both sides of the line it is satisfactory to reflect that in almost every complaint against our country the offense may be traced to emigrants from the provinces who have sought refuge here. In the few instances in which they were aided by citizens of the United States, the acts of these misguided men were not only in direct contravention of the laws and well-known wishes of their own Government, but met with the decided disapprobation of the people of the United States. I regret to state the appearance of a different spirit among Her Majesty's subjects in the Canadas. The sentiments of hostility to our people and institutions which have been so frequently expressed there, and the disregard of our rights which have been manifested on some occasions, have, I am sorry to say, been applauded and encouraged by the people and even by some of the local authorities of the provinces. The chief officers in Canada, fortunately, have not entertained the same feeling, and have probably prevented excesses that must have been fatal to the peace of the two countries.

Whether moved by the hostile spirit of resentment for past grievances, to which President Van Buren alludes, or by the lesson taught by the events of the past year and by the consciousness that the exposed and undefended condition of the Canadian lake and river frontier might invite renewed disturbance of public tranquillity by the "Canadian Patriots" and their adherents, it is certain that large military preparations took place in Canada during the spring of 1838 and far into 1839. Some 13,000 fresh troops were sent to Canada. Fort William Henry, at Kingston; Fort Wellington, opposite Ogdensburg; Fort Mississauga, nearly facing Fort Niagara; and the fortifications on the Canadian shores and at the approaches to the St. Clair River were strengthened

and extensive barracks erected at various points. In naval matters, too, activity was shown in the building of a Government steamer at Niagara City, in the purchase of two steamboats from citizens of Buffalo for service on Lake Erie, and in the building of a steamer on Lake Ontario. Rumors of other military preparations and of the building of other armed vessels on the lakes were rife, and the attitude of the British authorities in Canada seemed to menace the United States by a display of force much greater than any on the American side.

These conspicuous preparations naturally attracted considerable attention in the public mind and in Congress. Upon motion of Mr. Crary, on March 9, 1840, the House of Representatives—

*Resolved*, That the President of the United States be requested to communicate to this House, if compatible with the public service, whether the Government of Great Britain have expressed to the Government of the United States a desire to annul the arrangement entered into between the two Governments in the month of April, 1817, respecting the naval force to be maintained upon the American lakes; and that, if said arrangement be not annulled, whether there has been any violation of the same by the authorities of Great Britain.

A resolution introduced by Mr. Doty, calling for information as to "new military works being constructed and garrisoned with regular and militia troops by the English Government on that (Canadian) frontier," was at the same time debated and tabled under the rule. A more comprehensive resolution was moved by Mr. Fillmore, and adopted by the House on the 6th of April following, requesting the President to communicate "any information in possession of the executive department showing the military preparation of Great Britain, by introducing troops into Canada or New Brunswick, or erecting or repairing fortifications on our northern and northeastern boundary, or by preparing naval armaments on any of the great northern lakes or the waters connected with them, and what preparations, if any, have been made by this Government to put the United States, and especially the northern and northeastern frontiers, in a posture of defense against Great Britain in case of a war."

These several resolutions called forth three messages in reply, all bearing on the question of the armament on the lakes. The first,

under date of March 28, 1840, responded to the resolution of March 9, and transmitted the above-cited note from the British minister, Mr. Fox, of November 25, 1838, as being "the only communication on file in this (the State) Department on the subject." With the report of the Secretary of State was transmitted a report from the Secretary of War, communicating the report above mentioned of Major-General Scott, of March 23, 1840, on the general subject of the armament on the lakes in connection with the measures of defense adopted in 1838 against the movements of the "Canadian Patriots." (House Ex. Doc. No. 163, Twenty-sixth Congress, first session.) Another message in response to the same resolution of March 9, 1840, was sent to the House by the President on the 29th June following, accompanied by a report from the Secretary of War, conveying a special report from Gen. Alexander Macomb, dated June 26, 1840, in relation to the British naval preparations. (House Ex. Doc. No. 246, Twenty-sixth Congress, first session.) Another message was sent in by President Van Buren on the same day as the last, June 29, 1840, in response to the resolution of April 6, in regard to the reported military armaments of the British Government on the northern and northeastern frontier, communicating in like manner a report of the Secretary of War and a detailed statement from General Macomb. (House Ex. Doc. No. 246, Twenty-sixth Congress, first session.) These three messages are annexed hereto for more convenient reference.<sup>1</sup>

Although it thus appeared that the Government of Great Britain had not in fact manifested any desire to annul the arrangement of April, 1817, and that the extraordinary defensive measures in 1838 had been merely temporary and had been abandoned when the immediate occasion thereof had ceased, it continued to be the general feeling of Congress that steps were necessary, in view of the vexatious occurrences of the past years, to strengthen the military and naval defenses of the United States against the possibility of troubles arising with Great Britain. The Journals of Congress of that time teem with resolutions of inquiry and bills introduced looking to the adoption of defensive measures on the lakes and along the seaboard as well. The country was financially prosperous and the surplus revenues were an

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<sup>1</sup>Omitted from this print.

incentive to expenditures for national protection. This disposition found expression in the fortification bill, which later became an act, September 9, 1841. The debates upon the measure show that the condition of the lake defenses attracted considerable attention in view of the measures lately taken, and then reported to be in progress, on the Canadian side.

On August 3, 1841, Senator Allen, of Ohio, moved an amendment to the fortification bill, for the construction or armament of armed steamers, or other vessels for defense, on the northwestern lakes. This proposition was debated at some length on the day of its introduction and on the following day. Mr. Allen explained that he had not offered it with a view to benefit any particular section of the country, but that, having understood the British had two armed steamers on Lake Erie, "he thought armed steamers were necessary to watch armed steamers." Mr. Evans referred to the existing arrangement as prohibiting the construction of armed vessels by either power on the lakes. Mr. Woodbridge said he was not aware that the British Government had violated the treaty in this respect; that during the troubles of the recent insurrection that Government had employed vessels to assist in putting it down, but he had understood it was with the assent of our own Government this was done. Mr. Allen maintained that his amendment was demanded "for the defense of Lake Erie and for the purpose of making our force equal to that of the British Government, whose steamers were cruising about our coast, prying into its exposed parts." Mr. Preston regarded the project as wild and inefficient. Mr. Allen at length consented to modify his amendment, to provide for the construction or armament of such vessels on the northwestern lakes as the President might think most proper, and as should "be authorized by the existing stipulations between this and the British Government," in which form the amendment was adopted, and it eventually became part of the fortification act of September 9, 1841. (Statutes, V, 460.)

Very shortly after the passage of that act, Mr. Webster formally brought the matter of the reported increase of the British armament on the lakes to the attention of Mr. Fox, Her Majesty's minister, by a note dated September 25, 1841, in which, after reciting the terms of the agreement of 1817, and the communication addressed to him by Mr. Fox on November 25, 1838, he said:

[Mr. Webster to Mr. Fox, September 25, 1841.]

The Government of the United States, being thus assured that the armament of which information was thus given was for a special and temporary purpose, did not consider your communication as notice of the intention on the part of your Government to abandon the arrangement of 1817.

We are now informed that two large steam vessels fitted for warlike service, of 400 or 500 tons burden, and capable of carrying fifteen or twenty guns, are built, partially equipped, and ready to receive ordnance, and now lie at Chippewa. The Government of the United States does not allow itself to doubt that the object of this preparation is purely defensive and intended only to guard against attacks like that of 1838; but as far as it exceeds the amount of force which either Government is permitted to maintain, by the stipulations of 1817, it seems proper to call the attention of the British Government to the subject, to the end that both parties may have a clear understanding upon it. It is hoped, therefore, that if not already instructed respecting the object of the armament, you will inquire at the proper source, to the end that you may be able to give explicit assurances to this Government that these vessels of war, if, unhappily, it shall be found necessary to use them at all, will be confined to the sole and precise purpose of guarding Her Majesty's provinces against hostile attacks.

Two months having passed without any response from the British minister, Mr. Webster addressed Mr. Fox anew and even more formally on the subject on the 29th of November. His note may conveniently be quoted in full:

DEPARTMENT OF STATE,  
*Washington, 29th November, 1841.*

HENRY S. FOX, Esquire, etc.:

The undersigned, Secretary of State of the United States, has the honor of calling the attention of Mr. Fox, Her Britannic Majesty's envoy extraordinary and minister plenipotentiary, to a letter addressed to him by the undersigned on the 25th of September last, on the subject of two steam vessels of war which were understood to be built, or purchased, and in the process of equipment, at Chippewa, in Canada, and respectfully to invite as early a reply to that letter as Mr. Fox's information and instructions may enable him to give. It was the object of the convention of 1817 to prevent, both on the part of the United States and England, the necessity of maintaining expensive naval armaments on the lakes, to place the parties on a footing of perfect equality, and to remove causes of jealousy and apprehension on the borders, on the conclusion of the war, by a mutual agreement to disarm on both sides, so far as the waters of the lakes were concerned. It is obvious that a rigid compliance with the terms of the convention by both parties can alone accomplish the purposes

intended by it. The convention interdicted the building, as well as the equipment of vessels of war, beyond the fixed limit. The United States have not been disposed to make complaint of the temporary deviation from this agreement by the British Government in 1838, under what was supposed to be a case of clear and urgent necessity for present self-defense. But it can not be expected that either party should acquiesce in the preparation by the other of naval means beyond the limit fixed in the stipulation, and which are of a nature fitting them for offensive as well as defensive use, upon the ground of a vague and indefinite apprehension of future danger. The undersigned doubts not that Mr. Fox will see the great importance as well as the great delicacy of this subject. Having thus again called Mr. Fox's attention to it, the undersigned concludes by observing that the United States can not consent to any inequality in regard to the strictness with which the conviction of 1817 is to be observed by the parties, whether with respect to the amount of naval force or the time of its preparation or equipment. The reasons for this are obvious and must immediately force themselves upon Mr. Fox's consideration.

The undersigned avails himself of this occasion, etc.

DAN'L WEBSTER.

Mr. Fox replied on the following day, November 30, 1841, giving the desired assurance that the vessels of war in service on the lakes had been equipped "for the sole purpose of guarding Her Majesty's provinces against hostile attack." His reply may also be given in full, as bearing upon the subsequent question of the termination of the arrangement of 1817.

WASHINGTON, *November 30, 1841.*

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date, in which, referring to a previous communication addressed to me on the 25th of last September, you call my attention officially to the naval armament at present employed by Her Majesty's authorities on the Canadian lakes.

I was under the impression that at an informal conversation which occurred at the period of your addressing me the first of these communications, I had sufficiently explained to you that I considered the statement contained in my official letter to Mr. Forsyth of the 25th of November, 1838, upon the subject of the increased British armament then fitting out upon the lakes, as applying equally to the circumstances of the present time; it being unfortunately notorious that Her Majesty's provinces are now, as then, threatened with hostile incursion by combinations of armed men, unlawfully organized and prepared for war within the frontier of the United States; and it being found by experience that the efforts of the United States Government, though directed in good faith, to suppress those unlawful combinations are not attended with the wished-for success.

I shall refer the communications which you have addressed to me to Her Majesty's Government at home, with the view of learning the pleasure of Her Majesty's Government in regard to the continuance or annulment, after due notice, of the convention of 1817; and in the meantime I have no difficulty in giving you the assurance which in your letter of the 25th of September you state the United States Government desires to receive, that the British vessels of war now serving on the Canadian lakes have been equipped for the sole purpose of guarding Her Majesty's provinces against hostile attack.

I avail myself of this occasion, etc.,

H. S. Fox.

This phase of the matter then terminated, and no record is found of any communication, as foreshadowed by Mr. Fox, of the pleasure of Her Majesty's Government touching the continuance or annulment of the arrangement of 1817.

Soon after the passage of the fortifications act of 1841, and in execution of the authority therein given to the President to build and equip war vessels for service on the lakes, the Secretary of the Navy initiated steps for the construction of an iron steamer for service on the upper lakes, and during the next two years there was constructed at Pittsburg the side-wheel bark *Michigan*, which was removed in sections to Erie, and there completed and floated in the summer of 1844. Her registered tonnage was 498, and her armament then consisted of two 8-inch guns and four 32-pound carronades. This drew forth a remonstrance from the British Government.

Under date of July 23, 1844, Mr. Packenham, Her Majesty's minister, addressed Mr. Calhoun, representing that at that moment the naval armament of the United States on the lakes greatly exceeded that to which the two countries reciprocally restricted themselves by the agreement of 1817, especially in regard to number and caliber of guns, as to which he instanced recent advertisements for ordnance supplies for service on the lakes, calling for a number of 32-pound chambered cannon and ammunition for the same, while the agreement only permitted the use of 18-pounders. Mr. Packenham admitted that as a fact, not long before, when the Canadian provinces were threatened with invasion by parties unlawfully organized within the United States, Great Britain had, in her own defense, maintained a naval force on the lakes in excess of the stipulations of the agreement of 1817, but an explanation had been given of the necessity of that departure

from the existing engagement which had appeared to satisfy the Government of the United States, and when a change in the attitude and disposition of the people on the frontier had become sufficiently evident to permit a feeling of security against aggression the British force had been reduced to the prescribed limits. He added:

At the present moment there are happily no circumstances on either side to justify or require any departure from the strict fulfillment of that agreement, and it therefore becomes by all means desirable that it should be fulfilled to the letter by both the contracting parties.

In view of all this Mr. Packenham stated the desire of Her Majesty's Government "to receive satisfactory explanation as to the intentions of the United States Government with reference to the fulfillment of the agreement of 1817." The answer of Mr. Calhoun, under date of September 5, 1844, merely acknowledges Mr. Packenham's note as having been promptly referred for consideration to the Secretary of the Navy, and transmits a copy of the Navy Department's reply.

Secretary Mason's letter, under date of September 4, 1844, states that he is not aware that the United States naval force on Ontario and Huron exceeds that to which the United States and Great Britain reciprocally restricted themselves by the agreement of 1817. As to Lake Erie, one steamer, the *Michigan*, had been constructed under authority of the act of September 9, 1841, and was then lying at Erie completed, with her armament on board, ready for a cruise. In consequence of the remonstrance of Her Britannic Majesty's minister the commander of the *Michigan* had been ordered not to leave the port of Erie on a cruise until further orders. Mr. Mason's letter goes on to say:

[Mr. Mason to Mr. Calhoun, September 4, 1844.]

You will perceive that the orders were given for the construction of this vessel at a time when the British Government had in commission a larger force than that authorized by the agreement of April, 1817; but there is nothing on the records of the Department to show that there was a purpose of disregarding the restrictions of that agreement. I have reason to believe that Her Majesty's Government has still in commission on the Northwestern lakes a much larger force, both in number and tonnage, than that authorized by the agreement. I transmit copies of two letters received on that subject. The vessels mentioned in the letter of Passed Midshipman Lambert as in commission and

commanded by officers of the royal navy are borne on the navy list of the royal navy published by authority of the Admiralty; and although they are reported to be pierced for a large number of guns, they appear by the list to mount only one gun each. But the restriction is as imperative as to tonnage and number as to armament. It is worthy of remark that at the date of the agreement between the two Governments steamers were in use to a very limited extent as passenger vessels, and perhaps not at all as ships of war. The restriction as to tonnage would probably not have been adopted if their use had been anticipated. No effective steamer for any purpose, it is believed, would be built of a tonnage of 100 tons.

I would respectfully suggest that this consideration would justify a revision of the agreement on the subject, and also that if it is considered that the British vessels are not inconsistent with the agreement by reason of the armament being limited to one gun each, the armament of the steamer *Michigan* can be readily reduced to that number.

The accompanying reports mentioned by Secretary Mason are indefinite. Lieutenant Parmelee learns that there is a powerful British steamer, "with her armament taken out," at Penetauguashia, on Lake Huron, while Passed Midshipman Lambert reports the recent launch at Kingston of a wooden steamer, the *Cherokee*, of some 600 tons, capable of being fitted for service in twelve days, and able to mount from sixteen to twenty-four guns; the presence in commission at Toronto of the iron steamer *Mohawk*, rated at from four to six guns; the schooner *Montreal*, on Lake Ontario, and on the upper lakes the iron steamer *Minus* and the schooner *Experiment*, both commanded by officers of the royal navy.

This report of the Secretary of the Navy is both suggestive and valuable, because expressly noting the great change of circumstances that had taken place on the lakes between 1817 and 1844, the substitution of iron for wood in steamer building, and the advance in ordnance and armament. His proposition for a revision of the agreement to adapt it to more modern exigencies does not appear to have been followed up, and correspondence on the general subject ceased for many years.

It was next revived by a formal inquiry addressed by Lord Napier to Mr. Cass on April 9, 1857, from which it appears that the presence of the *Michigan* in the upper lakes, which had passed unnoticed during the thirteen preceding years, had attracted renewed attention. He wrote as follows:

[Lord Napier to Mr. Cass, April 9, 1857.]

In conformity with the directions of the Earl of Clarendon, I have the honor to solicit your attention to a subject affecting the execution of the treaty of 1817 between Great Britain and the United States for the regulation of the establishments of the two countries on the lakes.

It has been submitted to Her Majesty's Government by the Governor of Canada that an American armed vessel, qualified as a revenue cruiser, lies in the Detroit River, and from which it makes frequent excursions into all the accessible lakes. This ship was alleged to be of the burden of 800 tons, custom-house measurement, and to be furnished with a 68-pound Paixhan gun, dimensions and armament inconsistent with the terms of the treaty above mentioned, which sanctions vessels of 100 tons only, armed with one 18-pounder.

These circumstances having been brought to the knowledge of Mr. Dallas by the Earl of Clarendon, the American minister was enabled to state to his lordship that the vessel in question, by name the *Michigan*, was armed only with an 18-pound gun, but that she was of a greater measurement than is compatible with the provisions of the convention.

In making this communication to you on the part of Her Majesty's Government, I venture to suggest to you the expediency of further inquiry, in order that measures may be taken for the correction of any infringement of the engagements of 1817 which may have occurred.

No record is found of any written reply on the part of Mr. Cass. The Minister's inquiry, and especially his pointed exception to the qualification of the steamer at Detroit as a "revenue cruiser," and his implied claim that the employment of revenue cutters, as distinct from naval vessels, fell under the prohibitions of the agreement of 1817, may indeed have been embarrassing in view of the fact that the United States had maintained two small revenue cutters on the lakes for some years before, and at that time the building of other and smaller cutters for that service, in replacement of those then existing, was authorized by existing law. Section 2 of the sundry civil appropriation act of August 18, 1856, provided:

That the Secretary of the Treasury be, and he is hereby authorized to cause to be sold at public auction the revenue cutter *Ingham*, now stationed at Detroit, and the *Harrison*, now stationed at Oswego, and in lieu thereof to cause to be built six cutters for the protection of the revenue on the lakes of the burden of about fifty tons each; and that the sum of forty-five thousand dollars be, and the same is hereby, appropriated for said purpose, out of any money in the Treasury not otherwise appropriated, in addition to the proceeds of the sale above authorized.

Lord Napier's note having been referred to the Secretary of the Treasury, Mr. Cobb replied, April 13, 1857, that "there are no revenue cutters stationed on either of the lakes. The steamer *Michigan*, referred to in the communication of Lord Napier, is a naval vessel, under the control of the Navy Department." In fact, by this time the two cutters previously stationed on the lakes had already been sold under authority of the foregoing enactment—the *Ingham* at Detroit, October 8, 1856, to Wm. H. Patton, for \$1,441, and the *Harrison* at Oswego, to Messrs. Merry & Gay, for \$1,690.

The building of the six small cutters for revenue service on the lakes would seem to have been begun about this time and to have so far progressed by the summer of 1858 as to attract the attention of the British authorities. On July 2, 1858, in an informal and personal note to Mr. Cass, Lord Napier wrote:

[Lord Napier to Mr. Cass, July 2, 1858.]

When I next meet you it will be my duty to ask you verbally for an explanation on a matter which has reached Her Majesty's Government from Canada. It is reported there that the Federal Government have placed on the lakes six new armed cutters, and it is apprehended that should such be the case this measure may not square with the mutual obligations of the two countries contained in the treaty of 1817. You would oblige me very much by inquiring whether the vessels alluded to have been built and whether they are destined for the purpose alleged.

The verbal inquiry thus foreshadowed was made a few days later, when Lord Napier left with Mr. Cass an undated memorandum of its purport, as follows:

MEMORANDUM.—Are any vessels of war or revenue vessels about to be placed on the lakes?

If there be vessels in course of construction for this purpose, what is their number and what is the tonnage and armament of each?

Are these vessels built in virtue of a specific appropriation by Congress, and when was that appropriation taken?

No trace of any action upon or in reply to this inquiry is found of record.

## III

The breaking out of the war of the rebellion in 1861 and the strenuous efforts put forth to strengthen the defenses of the United States on the water as on land naturally caused our naval armament and preparations to be watched with much care by the representatives of foreign powers. Great Britain was, of course, chiefly interested in this defensive movement, by reason of the popular manifestations of English and Canadian sympathy with the Confederate cause.

On August 31, 1861, Lord Lyons addressed Mr. Seward, stating that the attention of Her Majesty's Government had been drawn to the size and armament of the naval force maintained by the United States on the lakes above Niagara Falls; that the tonnage of that force, "and certainly the armament of the steamer *Michigan*, would seem to be in excess of the limit stipulated in the arrangement of 1817;" and that he was instructed to represent the matter to the Government of the United States.

Mr. Seward, after consultation with the Secretary of the Navy, replied, September 12, that the naval force of the United States on the upper lakes consisted of the steamer *Michigan*, of 582 tons, carrying one gun of 8-inch caliber, and that the vessel was then, as theretofore, used exclusively for the purpose of recruiting for the Navy, with artillery practice for the newly recruited seamen. The naval force in question had not been increased, as the information received by the British Government seems to have led it to apprehend. He added:

It is not supposed by this Government that their retaining of the steamer in question upon the lakes is a violation of their arrangement of 1817. But if the British Government thinks otherwise, we shall be happy to consider its views in that respect.

The invitation thus conveyed was not then accepted, and the matter dropped for a time.

In 1864 the efforts of certain Confederate agents, stationed in and operating from Canadian territory, occasioned great disquietude to the Government of the United States and constrained the exercise of considerable vigilance on the northern frontier to prevent communication between those agents and their confederates in the United States. The

inadequacy of the limited naval force on the Canadian frontier to meet the constant exigencies of the hour became apparent.

In the House of Representatives on June 13, 1864, Mr. Spalding introduced a joint resolution (H. R. 91) with a view to terminating the arrangement of 1817. It was referred to the Committee on Naval Affairs, and on June 18 was reported back without amendment. Pending the question on its engrossment, Mr. Elihu B. Washburne submitted an amendment, which was agreed to. The resolution was thereupon read a third time and passed. Careful search fails to show the original text as moved by Mr. Spalding, but as the resolution passed the House with Mr. Washburne's amendment, it is worthy of note that the preamble recites, as justifying notice of termination, that—

The treaty of eighteen hundred and seventeen, as to the naval force upon the lakes, was designed as a temporary arrangement only, and, although equal and just at the time it was made, has become greatly unequal through the construction of [by] Great Britain of sundry ship canals; and whereas the vast interests of commerce upon the Northwestern lakes, and the security of cities and towns situated on their American borders, manifestly require the establishment of one or more navy yards wherein ships may be fitted and prepared for naval warfare; and whereas the United States Government, unlike that of Great Britain, is destitute of ship canals for the transmission of gunboats from the Atlantic Ocean to the western lakes, etc.

In this form the resolution went to the Senate, where it failed of consideration during that session.

The incident, however, did not escape the watchful eye of Lord Lyons, who seems to have reported it home for instructions, which were soon sent him. He accordingly wrote to Mr. Seward, under date of August 4, 1864, stating that the attention of Her Majesty's Government had been drawn to the motion made in Congress during the recent session with a view to putting an end to the arrangement between Great Britain and the United States limiting the naval force to be maintained upon the American lakes, and adding:

This arrangement has worked satisfactorily for nearly half a century. It has preserved both nations from a vast amount of inconvenience and expense, and (which is of infinitely more importance) it has warded off occasions of

disagreement and quarrel. Her Majesty's Government would view the abrogation of it with great regret and no little alarm.

Mr. Seward replied the next day, August 5, 1864, informing Lord Lyons that the motion made in Congress and referred to in his note "did not prevail," and adding: "There is at present no intention to abrogate the arrangement which has been so long in force. I will thank your lordship to assure Her Majesty's Government that timely notice will be given if these views should change."

Soon afterwards, on September 26, 1864, Mr. F. W. Seward, Acting Secretary of State, notified Mr. Burnley, in charge of the British legation during Lord Lyons's absence, that, owing to recent hostile and piratical proceedings on the lakes between the United States and Her Majesty's possessions, it had been deemed necessary for the present to increase the "observing force" of the United States in those lakes; "that the arrangement is temporary, and will be discontinued so soon as circumstances permit;" and that the vessels to be employed on that service would be under instructions to respect British rights in all cases.

It is noticeable that in announcing such a temporary increase of naval armament on the lakes and in assigning the reasons therefor Mr. Seward closely followed the precedent set by Mr. Fox's similar notification in 1838, when the Canadian peace was threatened by hostile ventures. Mr. Burnley does not seem to have recalled the pertinent parallel, for in his note of acknowledgment, on September 28, he said:

Without wishing to prejudge the question, I must leave it to Her Majesty's Government to decide as to whether such a measure, although only temporary in its effect, can be warranted by treaty stipulations.

To this intimation and reservation on Mr. Burnley's part Mr. Seward made no direct response; but on the 1st of October, 1864, he wrote to Mr. Burnley, referring to previous correspondence on the subject, and announcing that—

It has been deemed advisable at this juncture to charter the steam propeller *Hector* for revenue-cutter purposes on the lakes. Any excess which may be thus occasioned, however, in the armament of United States vessels in that

quarter over the limit fixed by the arrangement of April, 1817, will be temporary only; and as it has been made necessary by an emergency probably not then foreseen, may not be regarded as contrary to the spirit of the stipulation of that instrument.

Mr. Burnley acknowledged receipt of this notification October 4, 1864, saying that he had forwarded copies to Her Majesty's Government.

On the 10th of October following Mr. Seward transmitted to Mr. Charles Francis Adams the notes exchanged with Lord Lyons August 4 and 5 and with Mr. Burnley September 26 and 28, 1864, with the simple direction "to make the needful explanations to Earl Russell on the subject." On the same day Mr. Seward informed Mr. Burnley in connection with "the proposed temporary increase of the observing force of the United States on the American lakes," that the correspondence had been sent to Mr. Adams with instructions "to make explanations to Earl Russell, which it is not doubted will prove satisfactory to Her Majesty's Government."

Without, however, awaiting the result of the explanations Mr. Adams had been directed to make to Earl Russell or the expression of the opinions of Her Majesty's Government on the subject in consequence of Mr. Burnley's report of the incident, Mr. Seward determined to plant the question on a positive and unmistakable footing by notifying the British Government that the right of self-preservation would be exercised to the full by the increase of the defensive armament on the Great Lakes to any necessary limit, and, if need were, by terminating the arrangement of April, 1817, should it be found incompatible with measures needful to the public safety.

On the 24th of October, 1864, Mr. Seward forwarded to Mr. Adams a comprehensive and explicit instruction to this end, passing in review the recent occurrences proving the inadequacy and inefficiency of the British laws and regulations applicable to the enforcement of the obligations of friendly neutrality on the Canadian borders and the repeated failures of the British authorities to check the constant abuses of Canadian territory as a base for hostile designs against the peace of the United States. Instances of such unfriendly acts are cited, such as the seizure of the *Chesapeake* by Braine upon the high seas; the capture of the *Philo Parsons* and *Island Queen* by an armed band

from Malden, on the Canadian shore of the mouth of the St. Clair River below Detroit, in connection with a plot to release the insurgent officers confined on Johnson's Island, and the raid upon St. Albans, Vt., by a band of desperate men from Canada. After commenting on the insufficiency of the British neutrality act, as proven by these occurrences, and the slight heed paid in Canada to the Queen's proclamation of warning, Mr. Seward takes up the question of our defensive measures on the lakes as follows:

[Mr. Seward to Mr. Adams, October 24, 1864.]

It is obvious that at the time of the informal arrangement between the two Governments of April, 1817, limiting their naval force on the lakes, a condition of things like the present could scarcely have been anticipated. The object of that arrangement was to prevent either party from keeping in commission the considerable naval force which they both had employed in that quarter during the war then recently closed. If peace was expected to continue, the force was an unnecessary burden to both parties; but, on the contrary, if war should suddenly be renewed, one or the other might, in anticipation of that event, have clandestinely or otherwise so augmented its force as to insure to it a dangerous advantage. Believing that these were the views entertained at the time the arrangement was entered into, and that neither the United States nor Great Britain expected to relinquish their right to self-defense in the event of a civil war in the territories of either by the limitation referred to, the Secretary of the Treasury, as you will see from the correspondence (a copy of which is inclosed) has chartered two propellers, one on Lake Erie and the other on Lake Ontario, for the purpose of checking and suppressing depredations on our trade and territory in that region similar to those above mentioned.

\* \* \* \* \*

It is, however, impossible to resist the conviction that peace can not be reliably maintained upon the border unless more effective measures shall be adopted to secure that end than those that have hitherto been used by both Governments. \* \* \*

It is now my duty to instruct you to give notice to Earl Russell, in conformity with the treaty reservation of that right, that at the expiration of six months after you shall have made this communication the United States will deem themselves at liberty to increase the naval armament upon the lakes if, in their judgment, the condition of affairs in that quarter shall then require it. And you will be careful to advise us of the day on which this notice is given. You will assure the Earl, however, that this proceeding is adopted only as a necessary measure of national defense, and not only with no purpose of hostility, but, on the other hand, with a desire no less earnest than heretofore to preserve the most friendly relations with Great Britain. Moreover, this Gov-

ernment will in every case direct its best efforts to prevent invasion of British territory, whether by way of popular retaliation or otherwise. It is not for us to indicate the means Her Majesty's Government should adopt to maintain neutrality on their side of the border.

\* \* \* \* \*

Nor are we able to conceive of any remedy adequate to the present exigency but the recognition by Her Majesty's Government of the just and exclusive sovereignty of the United States in all the waters and territories legally subject to the jurisdiction of this Government.

It is to be noted that Mr. Seward characterized the arrangement of 1817 as "informal," a circumstance which may serve to throw light on his subsequent action in regard to it.

Mr. Seward's instruction was recast by Mr. Adams, the language and arrangement of the original being substantially adhered to, in the form of a note to Earl Russell, which, being dated November 23, 1864, was delivered at the foreign office "at 5 minutes past 6 o'clock that evening," and on November 25 Mr. Adams duly reported his compliance with Mr. Seward's orders.

The British answer was conveyed to Mr. Seward through the medium of the British chargé, Mr. Burnley, on December 17, 1864, by means of a brief note transmitting copy of an instruction addressed by Lord Russell to Lord Lyons, under date of November 26, 1864. Although described by Mr. Burnley as "relative to the intention of the United States Government, in conformity with the treaty reservation right, to increase their naval armament upon the North American lakes," the note of Lord Russell is an elaborate controversion of Mr. Seward's general line of argument and a defense of the declared indisposition of Her Majesty's Government either to deny to the Southern States belligerent rights, or to propose to Parliament to make the laws of the United Kingdom generally more strict, or to refuse asylum to persons in hostility with a government or nation with whom Her Majesty is at peace. Counter charges of excessive exercise of belligerent rights by the United States are made. The reference to the pivotal point of Mr. Seward's communication, the stipulated six months' notice of the termination of the agreement of 1817, is very brief, and reads as follows:

[Lord Russell to Lord Lyons, November 26, 1864.]

It is perfectly competent to the United States to give notice that at the end of six months that Government will be at liberty to increase their naval force on the lakes. It is certainly true that while both nations are disarmed on the lakes marauders or depredators may destroy or capture unarmed vessels belonging to either party. Her Majesty will, of course, be at liberty also to increase her naval force on the lakes at the expiration of the six months after notice if she should think fit so to do. But it is to be hoped that when peace is restored the former agreement, which was formed upon just and wise considerations, may be renewed, as one that must be advantageous to both parties.

On January 10, 1865, Mr. Seward wrote to Mr. Burnley, briefly acknowledging the receipt of the British reply, and promising "attentive consideration" to the views and suggestions presented to this Government by Earl Russell.

Meanwhile the critical condition of affairs on the Canadian border and the apparent inability, if not indisposition, of the provincial authorities to enforce observance of neutrality in that quarter, was not slow to attract the earnest attention of Congress. On the assembling of Congress in December, 1864, much feeling was displayed by reason of the recent St. Albans raid, and on December 14 the publication of the news that the raiders had been discharged on the previous day for want of jurisdiction led Senator Chandler to move a resolution directing the Committee on Military Affairs "to inquire into the expediency of immediately enlisting an army corps to watch and defend our territory bordering on the lakes and Canadian line from all hostile demonstrations." Mr. Sumner followed this up the next day, December 15, 1864, by submitting the following resolution, which was considered by unanimous consent and agreed to:

*Resolved*, That the President of the United States be requested, if not inconsistent with the public interest, to furnish to the Senate any information on the files of the Department of State concerning the paper published in the volume of Treaties and entitled "Arrangement between the United States and Great Britain between Richard Rush, esquire, Acting Secretary of State, and Charles Bagot, His Britannic Majesty's envoy extraordinary," relating to the naval force to be maintained upon the American lakes.

The message of President Lincoln of January 9, 1865, in compliance with this resolution, merely transmitted a brief report of the Secretary

of State, of even date, referring to the publication in the folio volume of American State Papers of the correspondence between Messrs. Monroe and Rush and Mr. Bagot, whereby the arrangement of April 28-29, 1817, was concluded. Mr. Seward added:

From these papers it will be seen that the limitation of the force to be maintained was sought by this Government. Although the convention seems somewhat informal as published in the Revised Statutes, yet upon consulting the original papers it appears to have been duly approved by the Senate, ratified by the President, and proclaimed as law.

This message was referred January 12, 1865, in the regular order of business, to the Senate Committee on Foreign Relations, of which Mr. Sumner was chairman.

There was then pending in that committee Mr. Spalding's resolution (H. Res. 91) of the preceding session, which, as amended by Mr. Washburne, had passed the House of Representatives on the 18th of June, 1864, for the giving of notice of the termination of the arrangement of 1817. Being aware of the fact that in the meantime such notice of termination had been given in diplomatic correspondence with Her Majesty's Government, Mr. Sumner, on January 10, 1865, requested a copy of it, as "necessary to determine the character of the legislation which may be expedient," and on January 12 received from Mr. Seward information of the instruction of October 24, 1864, which Mr. Adams had communicated to Earl Russell on the 23d of November following, as above stated. On January 17, 1865, Mr. Sumner, from the Committee on Foreign Relations, reported the House resolution with an amendment. The next day, January 18, the joint resolution, with Mr. Sumner's amendment, was considered in Committee of the Whole, and, the amendment having been agreed to, the resolution was reported to the Senate as amended and forthwith passed. (Senate Journal, Thirty-eighth Congress, second session, p. 82.) The House of Representatives concurred in the amendment February 4, 1865, and the resolution was approved by the President on the 9th of the same month, as follows:

JOINT RESOLUTION to terminate the treaty of eighteen hundred and seventeen, regulating the naval force on the lakes.

Whereas the United States, of the one part, and the United Kingdom of Great Britain and Ireland, of the other part, by a treaty bearing date April,

eighteen hundred and seventeen, have regulated the naval force upon the lakes, and it was further provided that "if either party should hereafter be desirous of annulling this stipulation and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice;" and whereas the peace of our frontier is now endangered by hostile expeditions against the commerce of the lakes and by other acts of lawless persons, which the naval force of the two countries, allowed by the existing treaty, may be insufficient to prevent; and whereas, further, the President of the United States has proceeded to give the notice required for the termination of the treaty by a communication which took effect on the twenty-third of November, eighteen hundred and sixty-four: Therefore,

*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the notice given by the President of the United States to the Government of Great Britain and Ireland to terminate the treaty of eighteen hundred and seventeen, regulating the naval force upon the lakes, is hereby adopted and ratified as if the same had been authorized by Congress.

Approved, February 9, 1865.

By this time the situation on the Canadian border had materially changed for the better. An increased disposition to obey the dictates of good neighborhood was apparent. As Mr. Adams said, writing under date of March 24, 1865, to Mr. Seward, the tone toward the United States had much changed, the alarmist policy seemed to have been abandoned, and in lieu of it came earnest professions of a belief that the friendly relations between the two countries were firmly established. Mr. Adams observed, in this relation, that it was not necessary at that time "to analyze very closely the elements with which this new faith is compounded." Doubtless the accumulating proof of the approaching success of the Union arms, and a recognition of the indefensible position of Canada in the event of trouble arising with the United States, had much to do with the evident change of heart across the border. The necessity for terminating the arrangement of 1817 and for adopting extraordinary defensive measures on the northern frontier had substantially passed away.

Under these reassuring circumstances, and notwithstanding the action of Congress in attaching legislative sanction to the executive notification of termination, which would in terms end the arrangement on the 23d of May, 1865, steps were taken to continue it "practically" in force after that date, and on the 8th of March, 1865, Mr. Seward sent to Mr. Adams, in London, the following instruction:

[Mr. Seward to Mr. Adams, March 8, 1865.]<sup>1</sup>

The notice which has been given by this Government for the termination of the convention of April, 1817, limiting the naval force on the lakes, was indispensable to enable us technically with honor to protect ourselves from insurgent incursion from Canadian territory. As it is hoped and believed that under existing circumstances no further incursions of that character may be apprehended, you may say to Lord Russell that we are quite willing that the convention should remain practically in force; that this Government has not constructed or commenced building any additional war vessels on the lakes or added to the armament of the single one which was previously its property, and that no such vessels will in future be built or armed for us in that quarter. It is hoped and expected, however, that Her Majesty's Government, on its part, so long as this determination shall be observed in good faith by that of the United States, will neither construct nor arm nor introduce armed vessels in excess of the force stipulated for by the convention referred to.

No record appears of the action of Mr. Adams upon this instruction, but that he did in fact communicate its purport to Earl Russell is seen by an inquiry addressed to Acting Secretary Hunter June 15, 1865, by Sir F. Bruce, who had succeeded Lord Lyons as British minister. Referring to Mr. Adams's communication of the instruction of March 8 to Her Majesty's Government, and reciting its import, Mr. Bruce adds:

[Sir F. Bruce to Mr. Hunter, June 15, 1865.]

It may admit of a doubt whether the notice of the abrogation of the agreement has been rendered inoperative by the communication thus made through the American minister, and, as it is essential that no misapprehensions should exist on so important a point, I am instructed to ascertain whether the dispatch to Mr. Adams of the 8th of March was intended as a formal withdrawal of the notice given by the American minister to Earl Russell on November the 23d, or whether, as the period of six months from the date of that notice has now elapsed, the agreement of 1817 is virtually at an end, and the abstinence of either party from increasing its force on the lakes, without further notice, rests merely on the good pleasure of each, unfettered by any diplomatic engagement.

Her Majesty's Government consider that in the latter case a very inconvenient state of things would exist; and I am directed to add that it appears

<sup>1</sup>Joint resolution of February 9, 1865, was sent to Minister Adams on the 13th of the same month. The instruction, No. 1269, of that date merely says: "You may make such use of the same as may be necessary or advisable." It was merely acknowledged by number on March 2, and the instruction of March 8 revoking the earlier one was sent so shortly thereafter that it is very likely that the "notice" was never actually "given."

to Her Majesty's Government that the best course would be that the notice of November 23 should be formally withdrawn, whereby the agreement of 1817 would remain unimpaired and would continue binding on both parties until six months after fresh notice by either of them of its abrogation.

To this inquiry Mr. Seward replied on the following day, June 16, 1865, that the instruction to the United States minister at London, of March 8, upon which his reported communication to Earl Russell was based, "was intended as a withdrawal of the previous notice within the time allowed, and that it is so held by this Government."

Here the correspondence in regard to the termination of the arrangement of 1817 ceased. Since that time it has been regarded by both Governments as in continuing force and effect.

#### IV

A brief episode of correspondence upon the general subject occurred later in 1865, by reason of the building and equipment of several revenue cutters by the United States for service on the lakes.

On November 3, 1865, Sir Frederick Bruce stated that the attention of Her Majesty's Government had been called recently to the construction of several vessels prepared for the reception of a powerful armament, which were reported to be destined for service on the North American lakes, and added:

In view of the convention which exists between the United States and Great Britain determining the armed force to be employed by the parties to it on the lakes, I am instructed to bring the subject under your notice and to request you to be good enough to furnish me with the explanations which it seems to require.

Mr. Seward promptly responded on the next day, November 4, 1865, that any vessels of the character referred to which might be in course of construction by the United States "are intended exclusively for revenue purposes, and that their armament, if any, will not be allowed to exceed the limit stipulated in the conventional arrangements."

Since then no question has been raised by the British Government with regard to the maintenance by the United States of armed revenue cutters on the lakes. It appears to be tacitly understood on both sides

that vessels for the revenue service do not fall within the limitations of the arrangement of 1817. Although the arrangement itself is silent on this point this understanding is quite in consonance with the spirit of the negotiations which led up to the final exchange of notes. Mr. Monroe's first proposition, made through Mr. Adams, expressed a willingness "to abstain altogether from an armed force beyond that used for the revenue." Mr. Adams emphasized this view in his first conference with Lord Castlereagh, intimating that "it would best of all suit the United States if the armaments should be confined to what is necessary for the protection of the revenue." Lord Castlereagh admitted that "everything beyond what should be necessary to guard against smuggling would be calculated only to produce mischief." Mr. Adams repeated this consideration in his note of March 21 to Lord Castlereagh. The questions of revenue service and armed naval force for defense or offense seem to have been kept apart, until Mr. Adams, in his note of August 2, 1816, to Mr. Bagot, proposed that the naval force to be retained by each party on the lakes should be "restricted in its duty to the protection of its revenue laws, the transportation of troops and goods, and to such other services as will in no respect interfere with the armed vessels of the other party." By August 13, 1816, Mr. Monroe had ascertained that Mr. Bagot's instruction was limited to the mere suspension of further augmentation of the naval force, and did not extend to fixing a rational maximum as "to the number of vessels, for example, which would be necessary for the support of the revenue laws," which point Mr. Monroe appears to have had very strongly in mind. The provisional understanding of August, 1816, did not go beyond the suspension of any increase in the respective naval forces on the lakes. The British statement, submitted in November following, only covers armed naval vessels and transports. The final agreement of April 28-29, 1817, while reciting the acceptance of Mr. Monroe's propositions of August 2, 1816, makes no reference to the previous suggestion that the employment of the permitted "naval force" might be restricted to the collection or protection of the revenue.

However matters may have been then left in this regard, the fact remains that now, and for some twenty-six years, the Government of the United States has drawn a sharp distinction between its naval force and revenue service on the lakes, and that this contention has passed

without controversion by Great Britain since it was announced by Mr. Seward in November, 1865.

The revenue service of the United States now comprises three steamers: *Perry*, stationed at Erie, 281.54 tons, with an armament of two 3-inch rifles; *Fessenden*, stationed at Detroit, 329.81 tons, one 30-pounder Parrott gun, two 24-pounder Dahlgren howitzers, and two 3-inch rifles; and *Johnson*, stationed at Milwaukee 499 tons, one 30-pounder Parrott and two 24-pounder howitzers. Another vessel, *Bibb*, formerly stationed on Lake Ontario, has been sold.

On the part of Canada no information has been received as to the number, tonnage, and armament of British revenue vessels stationed in those waters; but it has been recently stated on the authority of a report to the Treasury Department that two vessels for the Dominion Government have been constructed at Owen Sound, Ontario, and that, although styled "revenue cutters" and destined to suppress smuggling on the St. Lawrence River and the lakes, they are in reality capable of adaptation to naval purposes.

Additional weight is perhaps lent to this latter aspect of the report by the precautions that appear to have been taken to guard them from public inspection. Another revenue cutter of a similar type is said to have been recently launched from Hamilton, Ontario.

The naval force of the United States on the lakes, as has been seen, is now and has been for many years confined to the single iron side-wheel steamer *Michigan*, which now rates 685 tons and carries four howitzers.

It does not appear that any British or Canadian vessels are now, or have been for many years, stationed on the lakes. The dimensions of the locks on the St. Lawrence River canals exclude the entrance into the lakes of any vessel exceeding 9 feet draft or 200 feet in length; and the only vessels borne on the British naval list which appear to be capable of passage from the deep seas to the lakes, are some forty-three tugs, drawing 8 feet and armed with rapid-firing guns.

## V

The resolution of the Senate calls explicitly for the opinion of the Department of State as to whether the arrangement of 1817 is now held to be in force. The correspondence exchanged in 1864 shows that it is so regarded.

As between the United States and Great Britain, Mr. Seward's withdrawal of the six months' notice of termination within the prescribed period and before the arrangement could in fact have ended, is no less authoritative than the notification itself. The British Government, being as incompetent to inquire into the authority of the Secretary of State to withdraw the notification as it would have been to inquire into his authority to give it under the terms of the arrangement, could only accept and respect the withdrawal as a fact. Whether the Secretary of State was himself competent to withdraw the notification is not material to the international aspect of the case, because, being a matter of domestic administration, affecting the internal relations of the executive and legislative powers, it in no wise concerns Great Britain. It would be an unprecedented and inadmissible step in the international relations of governments, were Great Britain to question the authority of the executive power to withdraw the notification and continue the arrangement in full force and effect. As between the two countries the arrangement is, therefore, to be regarded as still in existence, and only terminable in good faith by six months' notice of abrogation on either side.

As a question of domestic administration and powers the action of the Secretary of State in giving notice of termination without previous authority of Congress, and in withdrawing such notice without legislation to that end and after the notice had been confirmed by legislation, opens the door to nice argument in theory touching the constitutional aspects of the transaction, but as a matter of practical effect such considerations may now be deemed more interesting than material. While on the one hand it may be said that the action of the Senate, in 1818, when it advised and consented to the arrangement of 1817, and the action of the President in proclaiming the arrangement, made it a supreme law of the land, and that the later action of Congress, in 1865, confirming the notice of termination given, operated alike to cure any constitutional defect attending the giving of that notice and to abrogate the arrangement itself as a law of the land, it may be asserted on the other hand that the continuance of an international understanding with Great Britain limiting the naval force to be maintained by either party in commission on the lakes, even if lacking express legislative sanction, is violative of no existing legislation. No act of

•Congress requires, or has at any time required, the commission of any other war vessel on the lakes than the single steamer *Michigan*, which for many years has formed our sole naval armament in those waters. This consideration doubtless prompted Mr. Seward when he directed Mr. Adams to "say to Lord Russell that we are quite willing that the convention should remain *practically* in force."

The circumstances and form of the original arrangement entered into in April, 1817, show that it did not in terms purport to be more than a record of an understanding mutually reached by the two Governments for the reciprocal regulation of a matter within the administrative competence of each. Its interpretation since that time, by temporarily increasing the force on either side when demanded by the exigencies of national self-defense, by tacitly withdrawing the necessary revenue force from the purview of its stipulations, and by resorting (as in the case of the *Michigan*), to the use of vessels of heavier tonnage and greater armament than the arrangement allows, all show an elasticity of observance which is only compatible with the conviction, on both sides, that the whole subject was within administrative control, and that it sufficed to observe the spirit of the arrangement by mutually abstaining from the creation of a martial force on the lakes in menace of the reciprocal obligations of good neighborhood.

The question of the spirit which controls, and should control, the understanding of two great Governments in this regard is to-day of vastly greater importance to their interests than any narrow contentions respecting its literal observance. Three-quarters of a century have passed since the arrangement was entered into. It in nowise responds to the enormous changes wrought in the conditions of intercourse upon the lakes. As an engagement to limit the effective force on each side to four vessels not exceeding 100 tons burden apiece, and each armed with one 18-pounder cannon, it is obsolete. Steam has supplanted sail power for naval purposes. The character and caliber of necessary and usual ordnance has undergone a change no less great. The upper lakes, where in 1817 the employment of any naval force on behalf of the United States was, to quote Mr. Adams's language, "important only in relation to the savages within our limits," are now the seat of an extended civilization. Where the huts of hostile tribes then stood great cities now face their shores. Chicago and Milwaukee are but half-century growths. The pathways of com-

merce cover the Great Lakes. The annual entry and clearance tonnage in some of the farther ports rivals, and even exceeds, that of New York and Liverpool.

An equally notable geographical change has taken place. Ship canals have made possible the passage of comparatively large vessels from lake to lake, and even from the extremest shores of Superior or Huron to the Atlantic Ocean. In 1817 a ship of any tonnage was confined to the lake on whose shores it was built. The waters of Erie, Ontario, and even Champlain had been the scene of historical naval combat, but the engaging fleets of three-deckers, carrying 74 guns apiece, had been built in those lakes, while the signing of the treaty of peace left other half-built frigates to decay on the stocks.

Under the changed conditions now prevailing such cumbrous armaments are as impracticable as needless. Flotillas of light-draft gunboats, rapid and easily maneuvered, are now most suitable for use on the lakes in time of war; in peace they should well be restrained on either side.

In 1817 the problem that presented itself to the negotiators was one of immediate reciprocal disarmament rather than of future limitation. A desperate war had just closed, and its animosities still rankled despite the signature of a treaty of peace. The navies of the late contestants were on the lakes, incapable of removal thence and unfitted for the peaceful mission of commerce. Their maintenance was as dangerous as it was useless and costly. The treaty of Ghent was silent in regard to disarmament; but upon the lakes only by disarmament could the menace of fresh conflicts on trivial occasion be averted from that quarter. All these considerations abundantly appear as a motive of Secretary Monroe's proposals to restrict the armaments on the co-terminous inland seas. They were in fact destroyed, no naval force worthy of the name being preserved. The little sailing vessels still permitted could not even act together. Ontario was separated from Erie by an impassable natural barrier. Offensive and defensive means of warfare were alike removed, leaving only the necessary instrumentalities for protecting the revenues and controlling the savages on either side the frontier.

If as early as 1844 the Secretary of the Navy held that the sole consideration of steamers having taken the place of sailing craft for war-like purposes would justify a revision of the agreement; if the-

House of Representatives in 1864 regarded the opening of the Canadian canals as introducing an inequality incompatible with its engagements; and if, as Mr. Seward held in 1864, the informal arrangement of April, 1817, could scarcely have anticipated such a condition of things as the maintenance of a marine force adequate to cope with domestic troubles or civil war on either side, it seems most desirable now, in view of the long lapse of time and the vast changes wrought in these and other no less important regards, that the arrangement now grown obsolete in practice and surviving in the letter only as a declared guaranty of international peace, should be modified to fit the new order of things, and with such adaptation to the exigencies of the future as prudence may forecast.

It may be permissible to adduce a simple illustration of the unfitness of the arrangement of 1817 to meet the modern conditions of intercourse. But recently the offer of a shipbuilding establishment on one of the lakes to construct one of the smaller vessels of our new Navy, to be taken thence by the Welland and River canals to the Atlantic for service on our seaboard, was not considered, because the construction of such a vessel on the lakes might be held to contravene the arrangement of 1817.

The undersigned, in conclusion, may remark that, in view of the complex character of the whole subject, and the circumstance that the history of the steps taken in 1865 for the termination of the arrangement of 1817, and of the manner in which it was continued in force, has not heretofore been connectedly presented, he has felt constrained to give a full relation from the outset, with copious citation from the records. Copies of certain selected documents, bearing upon the question of termination, are appended in full for more convenient consultation.<sup>1</sup>

Respectfully submitted.

JOHN W. FOSTER.

DEPARTMENT OF STATE,  
*Washington, December 7, 1892.*

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<sup>1</sup>Omitted from this print.

with like force, and on the waters of Lake Champlain to one vessel not exceeding like burden and armed with like force.

And it agrees, that all other armed vessels on these Lakes shall be forthwith dismantled, and that no other vessels of war shall be there built or armed. And it further agrees, that if either party should hereafter be desirous of annulling this stipulation and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.

The Undersigned is also directed by The President to state, that proper orders will be forthwith issued by this Government to restrict the naval force thus limited to such services as will in no respect interfere with the proper duties of the armed vessels of the other party.

The Undersigned eagerly avails himself of this opportunity to tender to Mr. Bagot the assurances of his distinguished consideration and respect.

RICHARD RUSH.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas, an arrangement was entered into at the city of Washington, in the month of April, in the year of our Lord one thousand eight hundred and seventeen, between Richard Rush, esquire, at that time acting as Secretary for the Department of State of the United States, for and in behalf of the government of the United States, and the Right Honorable Charles Bagot, His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, for and in behalf of His Britannic Majesty, which arrangement is in the words following, to wit:

The naval force to be maintained upon the American lakes by His Majesty and the Government of the United States shall henceforth be confined to the following vessels on each side, that is—

On Lake Ontario, to one vessel not exceeding one hundred tons burden, and armed with one eighteen-pound cannon.

On the Upper lakes, to two vessels not exceeding like burden each, and armed with like force.

On the waters of Lake Champlain, to one vessel not exceeding like burden, and armed with like force.

All other armed vessels on these lakes shall be forthwith dismantled, and no other vessels of war shall be there built or armed.

If either party should be hereafter desirous of annulling this stipulation, and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.

The naval force so to be limited shall be restricted to such services as will, in no respect, interfere with the proper duties of the armed vessels of the other party.

And whereas the Senate of the United States have approved of the said arrangement, and recommended that it should be carried into effect, the same having also received the sanction of His Royal Highness the Prince Regent, acting in the name and on the behalf of His Britannic Majesty.

Now, therefore, I, James Monroe, President of the United States, do, by this my proclamation, make known and declare that the arrangement aforesaid, and every stipulation thereof, has been duly entered into, concluded and confirmed, and is of full force and effect.

Given under my hand, at the city of Washington, this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and eighteen, and of the independence of the United States the forty-second.

JAMES MONROE.

By the President:

JOHN QUINCY ADAMS,  
*Secretary of State.*



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